



APPEARANCES

COMMISSIONERS

Keith Brackpool, Chairperson

David Israel, Vice Chairperson

Richard Rosenberg

Jesse H. Choper

John C. Harris

Bo Derek

STAFF

Kirk E. Breed, Executive Director

Robert Miller, Staff Counsel

Jacqueline Wagner, Regulations/Legislation Manager

Dr. Rick Arthur, Equine Medical Director

Dr. Jill Bailey, CHRB Veterinarian

ALSO PRESENT

Allen Gutterman, Santa Anita

Jerry Jamgotchian

Laura Rosier, San Luis Rey Downs

Scott Stanley, University of California Davis

Dr. Dana Stead

Pablo Saurez, TOC

John Sadler, CTT

Carlo Fisco, CTT

Alan Balch, CTT

APPEARANCES (CONT.)

ALSO PRESENT (CONT.)

Shane Gusman, Jockeys' Guild

Rom Robbins, Racing Secretary

Rod Blonien, Commerce Club

Jim Henwood, Fairplex Park

Bernie Thurman

Scott Daruty, Santa Anita Park

Sherwood Chillingworth, Oak Tree Racing Association

Mace Siegel

Jack Liebau, Hollywood Park

Brad Blackwell, TwinSpires

Richard Castro, Local 280

Jake White, Union Counsel

Steve Gressett, Local 280

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- A. The Board may convene a Closed Session to confer with and receive advice from counsel, considering pending litigation described in the attachment to the agenda captioned "Pending Litigation," as authorized by Government Code section 11126(e).
- 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 authorized by Government Code section 11126(e).

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PROCEEDINGS BEGIN AT 9:45 A.M.

(The meeting was called to order at 9:45 A.M.)

ARCADIA, CALIFORNIA, THURSDAY, FEBRUARY 17, 2011

MEETING BEGINS AT 9:45 A.M.

EXECUTIVE DIRECTOR BREED: Ladies and gentlemen, this meeting of the California Horse Racing Board will come to order. Please take your seats. This is the noticed regular meeting of the California Horse Racing Board. It will be held on Thursday, February 17, 2011 --

VICE CHAIR ISRAEL: Hey, Robert? Robert, could you close that door please?

EXECUTIVE DIRECTOR BREED: -- commencing at 9:30 or thereabout A.M. in the morning in the Baldwin Terrace Room at the Santa Anita Park Race Track, 285 West Huntington Drive, Arcadia, California. Present at today's meeting are Keith Brackpool, Chairman; David Israel, Vice Chairman; Jesse Choper, member; Bo Derek, member; John Harris, member; and Richard Rosenberg, member.

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

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

6           There is a public comment sign-in sheet for each  
7 agenda matter on which the Board invites comment. Also there  
8 is a sign-in sheet for those wishing to speak during the public  
9 comment period for matters not on the Board's agenda if it  
10 concerns horse racing in California. Please print your name  
11 legibly on the public comment sign in sheet when the matter is  
12 open for public comment. Your name will be called. Please  
13 come to the podium and introduce yourself by stating your name  
14 and organization clearly. This is necessary for the court  
15 reporter to have a clear record of all who speak.

16           When your three minute time -- when your three  
17 minutes are up the Chairman will ask you to return to your  
18 seats so others can be heard. When all the names have been  
19 called the Chairman will ask if there's anyone else who would  
20 like to speak on the matter before the Board. Also the Board  
21 may ask questions of individuals who speak. If the speaker  
22 repeats himself or herself, the Chairman will ask if the  
23 speaker has any new comments to make. If there are none, the  
24 speaker will be asked to let others make comments to the Board.

25           And as a postscript to that, before I turn the

1 meeting over to the Chairman, I would like to introduce Bill  
2 Westerman.

3 Bill are you here? Back in the back.

4 Bill is our chief -- our supervisor of investigating  
5 supervisor here at Santa Anita and the southern part of  
6 California and it his responsibility and my responsibility to  
7 maintain the proper decorum of this meeting, which means we'll  
8 all act like ladies and gentlemen. And with that, I will turn  
9 it over to the Chairman.

10 CHAIR BRACKPOOL: Good morning, everybody.  
11 Commissioner Moss sends his apologies but he is out of the  
12 state for a few days. So we are six, not seven, today.  
13 Beautiful day here so let's move it along so that we can all  
14 enjoy the balance of it.

15 I am going to start with item number one, approval of  
16 the minutes of the January 20th, 2011 meeting.

17 VICE CHAIR ISRAEL: Moved.

18 CHAIR BRACKPOOL: Do I have any comments from any  
19 Commissioners? No. Vice Chair Israel makes a motion to  
20 approve. Do I have a second?

21 COMMISSIONER CHOPER: Second.

22 CHAIR BRACKPOOL: Commissioner Choper seconds. All  
23 in favor?

24 ALL MEMBERS: Aye.

25 CHAIR BRACKPOOL: And it's approved.

1           Moving on immediately to public comment. The first  
2 speaker I have is Alan Gutterman from Santa Anita.

3           MR. GUTTERMAN: Good morning. This is -- good  
4 morning. This has been a very contentious year so far for all  
5 of us who live and die by racing in California, and it's only  
6 February. So I'm asking everyone here to take the three minute  
7 time --

8           EXECUTIVE DIRECTOR BREED: Give your name please.

9           MR. GUTTERMAN: -- and please consider the  
10 following --

11          CHAIR BRACKPOOL: Allen --

12          MR. GUTTERMAN: I'm Allen --

13          CHAIR BRACKPOOL: Yeah. Allen --

14          MR. GUTTERMAN: -- Allen Gutterman, Vice President of  
15 Marketing for Santa Anita Park.

16          CHAIR BRACKPOOL: Thank you.

17          MR. GUTTERMAN: I want to announce that Santa Anita  
18 has entered into a partnership with our neighbor, City of Hope,  
19 the great cancer care and research set in nearby Duarte. On  
20 April 17th following the last race on the closing day of the  
21 Santa Anita meet we are inviting every racing fan to do  
22 something they've never had the opportunity to do before, to  
23 step out on the track and walk the length of the historic Santa  
24 Anita's stretch.

25                 The event is called On Track to Beat Cancer. And to

1 take part in the walk a fan need only to contribute \$10.00 or  
2 more on the day of the event, and all the money will be  
3 dedicated specifically to City of Hope's Women's Cancers,  
4 Women's Cures program. Press releases will be distributed  
5 later today with an announcement similar to the one we're  
6 making here.

7           We'll be looking for racing fans, non-racing fans,  
8 their friends and their families to build teams and support  
9 groups. We want to see people with signs and banners praising  
10 loved ones who are battling cancer or banners honoring those  
11 who've succumbed to cancer. We want this to be a joyous  
12 memorable quarter-mile walk that will conclude at the finish  
13 line and the winner's circle with people singing, cheering,  
14 snapping photos, securing autographs, hugging and kissing and  
15 having had a memorable time at Santa Anita Park.

16           City of Hope has agreed to help create a wellness  
17 center in the infield with blood pressure testing, cancer  
18 screenings, bone marrow transplant information, and medical  
19 teams will be on site. This is not just an opportunity for  
20 City of Hope, though, this is an opportunity for California  
21 Racing. We're asking today that teams be organized to  
22 represent the California Thoroughbred Trainers, the  
23 Thoroughbred Owners of California, the Jockeys' Guild, the  
24 California Thoroughbred Breeders Association, and California  
25 Horse Racing Board, handicappers, horse players, racing fans,

1 unions, farms, vendors, media, our sister tracks and racing  
2 associations, and anyone at all who loves horse racing, to take  
3 the walk. Take the walk and support City of Hope. And we ask  
4 that every industry member be joined by their husbands, wives,  
5 children, partners, friends and loved ones marching with them  
6 as one in support of Women's Cancers-Women's Cures.

7           And to get this off on the right foot Commissioner  
8 Derek has agreed to head our advisory board. She'll be joined  
9 by Hall of Fame Jockey Julie Crohn, Jill Bafford, HRTV's  
10 Eclipse Award winning Amy Zimmerman, television executive Lindy  
11 DeKoven, Kelly Breen and other women in racing will be asked  
12 soon to come onboard. We hope that the walk will attract  
13 contributors from the entire racing industry, celebrities,  
14 cancer survivors, City of Hope's long list of ardent  
15 supporters, as well as our great racing fans.

16           Anyone making at least a \$10.00 donation to City of  
17 Hope will be eligible to join Bo Derek on the track. We're  
18 looking for a lot more though. We're hoping that the leaders  
19 of our industry can show the world how united horse racing can  
20 be in this fund raising effort that will speak volumes for our  
21 great sport. For sure we have all been touched by cancer. We  
22 have great fans and great horsemen and a great place for a late  
23 afternoon walk on April 17th.

24           I'm hoping we can set a Guinness Book of Records for  
25 gathering the most humans ever on a thoroughbred race track. I

1 don't know if that's a record that actually exists but we can  
2 create it. We believe that the media will be intrigued and we  
3 will coordinate our media efforts with City of Hope's. We  
4 think that video of the sea of people marching down Santa Anita  
5 Race Track will get nationwide attention.

6           The official color of the event is purple and we will  
7 soon be selling purple t-shirts commemorating the day. All  
8 proceeds after expenses also go to Women's Cancers, Women's  
9 Cures at City of Hope.

10           CHAIR BRACKPOOL: Thank you. Thank you.

11           MR. GUTTERMAN: Thank you very much.

12           CHAIR BRACKPOOL: Thank you. That's an excellent  
13 start to the meeting, start on something positive, flood of  
14 goodwill, good help to people, etcetera.

15           That will bring me to my next speaker, Jerry  
16 Jamgotchian.

17           MR. JAMGOTCHIAN: Boy, that's bad timing.  
18 Chairman -- Betfair -- excuse me, Brackpool. I'm sorry.

19           AUDIENCE: Boo.

20           MR. JAMGOTCHIAN: With -- with regards to that, in  
21 the minutes of --

22           EXECUTIVE DIRECTOR BREED: Can you state your name?

23           MR. JAMGOTCHIAN: Yes. Jerry Jamgotchian. With  
24 regards to the minutes dated January 20th on page 58, Chairman  
25 Brackpool on line 9 made the comment, "You're such a sad little

1 man. Okay, carry on." January 24th, my attorney Ron Caswell  
2 sent a letter to the CHRB and Mr. Brackpool basically  
3 requesting an apology. I suspect that there's not going to be  
4 any courtesy extended nor apology extended. But I just wanted  
5 to make sure, Mr. Brackpool, are you going to extend an apology  
6 or not? I didn't expect an answer. No big deal. When in  
7 doubt, you always make the right decision -- the wrong one.

8 I also wanted to say that the CHRB lost yet another  
9 case, BS 123038. It's a writ that was filed with regards to an  
10 Ingrid Fermin and her ability to be a steward. The judge on  
11 February 11th ruled that the CHRB must provide a hearing  
12 consistent with the code section violated. Also that the  
13 Executive Director can not essentially do underground  
14 regulations. And thirdly, that the respondent, CHRB, are  
15 required to pay my legal fees. So when the -- when the legal  
16 fee check is -- is paid I'll be more than happy to bring a copy  
17 up for all you to see.

18 Finally, it's interesting that Tampa Bay Downs is  
19 increasing purses, but they're not relying on the wagering  
20 public to fund the purses. I note that Tampa Bay Downs has  
21 increased their purses on claiming races significantly, in  
22 fact, to levels that are almost equal to Santa Anita.

23 It's quite interesting that this race track could do  
24 this without burdening their betters and basically imposing an  
25 illegal tax on their betters rather than helping to improve

1 handle, improving attendance, and improving the overall sport  
2 of horse racing in Florida. Maybe the group of you should take  
3 a look at what Tampa Bay Downs is doing and see if you can  
4 improve California Horse Racing like they are in Florida.

5 Thank you very much.

6 CHAIR BRACKPOOL: Next speaker, Laura Rosier.

7 MS. ROSIER: Good morning. Laura Rosier, San Luis  
8 Rey Downs. We at San Luis Rey Downs understand and appreciate  
9 that the Board is trying to help us resolve our issue with  
10 SCOTWINC. However, due to SCOTWINC -- however, due to  
11 SCOTWINC's nonperformance, refusal of dialogue, refusal to  
12 answer letters or come up with a plan, we have again been  
13 kicked off the agenda. Putting this issue off will not benefit  
14 our industry. If SCOTWINC plans to continue their funding for  
15 stabling, funds need to be dispersed equitably. If not, all  
16 stabling funding should be eliminated immediately. Thank you.

17 COMMISSIONER CHOPER: Can I ask a question?

18 CHAIR BRACKPOOL: You can. Commissioner Choper has a  
19 question.

20 COMMISSIONER CHOPER: Yeah. When we talked about  
21 this a couple of meetings ago --

22 MS. ROSIER: January or --

23 COMMISSIONER CHOPER: -- there was going to be --

24 MS. ROSIER: -- December.

25 COMMISSIONER CHOPER: -- some effort to put some

1 statistics together concerning the number of starters that came  
2 from San Luis Rey Downs.

3 MS. ROSIER: We sent that information.

4 COMMISSIONER CHOPER: Has that been put together?

5 MR. JONES: Yeah. It was sent in and we were  
6 prepared to -- to speak at the January 8th meeting, and all of  
7 our package had been sent in.

8 COMMISSIONER CHOPER: Where was it sent? To the  
9 office?

10 MS. ROSIER: CHRB.

11 COMMISSIONER CHOPER: To?

12 MS. ROSIER: The CHRB. Harold Coburn?

13 COMMISSIONER CHOPER: Okay. Thank you.

14 MS. ROSIER: The -- I --

15 COMMISSIONER CHOPER: Then we can get a look at  
16 those.

17 MS. ROSIER: I saw there --

18 COMMISSIONER CHOPER: Yeah.

19 MS. ROSIER: Okay. Because there was a packet that I  
20 just received this morning that looks like SCOTWINC had put  
21 together.

22 COMMISSIONER CHOPER: Oh, they've also done that?

23 MS. ROSIER: Well, it looks like it. I haven't  
24 really had a chance to look at it.

25 COMMISSIONER CHOPER: Okay. Well, then -- well, I'm

1 glad to hear that -- things move slowly but at least they're  
2 moving.

3 CHAIR BRACKPOOL: Commissioner Rosenberg?

4 COMMISSIONER ROSENBERG: Just to clarify.

5 SCOTWINC -- I met with Craig Fravel the first week in February  
6 and he had drafted a letter to be sent to the Board, which was  
7 sent to the Board, and was to be sent to you and to the people  
8 at San Luis Rey Downs indicating that, as I recall, that the  
9 SCOTWINC board had met, I believe in late December, and had  
10 authorized a group to get together to try to solve this problem  
11 of possible inequality on San Luis Rey Downs. And that Tom  
12 Robbins, I believe was to head that study.

13 And, you know, in the letter he mentions that -- some  
14 of the negatives that came up during the December meeting when  
15 we discussed this, the problems that they have, the funding  
16 problems they have. So I believe they're working on it. I  
17 don't know the status of it but that's why it was off the  
18 agenda, by the way. It wasn't bounced off the agenda for any  
19 other reason. We thought it was moving forward.

20 MS. ROSIER: I have a real problem with the fact that  
21 we got a copy of this from someone else this morning. Why  
22 wouldn't SCOTWINC want to --

23 CHAIR BRACKPOOL: Well, this is not the --

24 MS. ROSIER: -- give us the information?

25 CHAIR BRACKPOOL: This is not the forum for that

1 debate. You have the letter --

2 MS. ROSIER: Okay.

3 CHAIR BRACKPOOL: -- at this stage. We'll all follow  
4 up. Commissioner Rosenberg is -- has kindly agreed to take the  
5 lead on this for this Board. So I'm going to allow this to  
6 continue outside of this --

7 MS. ROSIER: Okay.

8 CHAIR BRACKPOOL: -- this meeting.

9 MS. ROSIER: Thank -- thank you.

10 CHAIR BRACKPOOL: Thank you very much, Laura.

11 Moving on to item number three, discussion and action  
12 by the Board regarding the proposed amendment of CHRB Rule  
13 1844, Authorized Medication, to reduce the permitted level of  
14 Phenylbutazone in an official test sample from five nanograms  
15 per milliliter of blood plasma or serum to two nanograms per  
16 milliliter of blood plasma or serum, and to reduce the  
17 permitted level of Lasix in an official test sample from 50  
18 nanograms per milliliter of blood plasma or serum to 20  
19 nanograms per milliliter of blood plasma or serum.

20 MS. WAGNER: Jackie Wagner, CHRB staff. The proposal  
21 before the Board is a proposal to amend CHRB Rule 1844. he  
22 amendment will do just what the Chairman said, it would reduce  
23 the levels of Phenylbutazone -- Phum-Bute -- it will reduce  
24 permitted levels Bute from five nanograms to two nanograms, and  
25 it will reduce the levels of flunixin from 50 --

1 CHAIR BRACKPOOL: Notice I said it.

2 MS. WAGNER: I know you did.

3 CHAIR BRACKPOOL: I didn't -- I didn't do the  
4 shorthand. It's okay. Carry on.

5 MS. WAGNER: And we will reduce the flunixin from 50  
6 to 20.

7 Staff would recommend that the Board would direct us  
8 to initiate the 45-day comment period on this proposal and we  
9 do have our equine medical director who's available for any  
10 questions the Board may have.

11 CHAIR BRACKPOOL: Dr. Arthur, would you give us a  
12 little background on this issue please?

13 DR. ARTHUR: Yes. First of all flunixin is not  
14 Lasix, it is Banamine, so --

15 CHAIR BRACKPOOL: It has it here.

16 DR. ARTHUR: It does. It says --

17 EXECUTIVE DIRECTOR BREED: Do you want to state your  
18 name for the record?

19 CHAIR BRACKPOOL: Right.

20 MS. WAGNER: Yes.

21 DR. ARTHUR: Dr. Arthur, Equine Medical Director for  
22 the California Horse Racing Board. This is an issue that has  
23 been reviewed nationally by a number of entities in horse  
24 racing. It came to the attention of the ARCI and the RMTC by  
25 the Regulatory Vets -- Veterinarian Committee -- Examining

1 Veterinarians Committee of the ARCI about two years ago. After  
2 a quite a thorough review it was recommended that the  
3 veterinarian's concern was legitimate and that the  
4 Phenylbutazone level be reduced to two micrograms.

5           And let me just tell what the issue is. It's really  
6 a safety and integrity issue for this Board; it's not a  
7 training issue: safety for horses and jockey in the integrity  
8 of racing. Of all our safety procedures what is clear is that  
9 the examining veterinarian is the key safety check for our  
10 horses. Pre-race examinations are challenging under the best  
11 circumstances, but let me get right to the heart of the issue.

12           Examining veterinarians have expressed concern that  
13 our current medication policies compromise their ability to  
14 properly evaluate soundness of in-today horses. This is about  
15 basically making sure that our veterinarians do a good job, can  
16 identify those horses at risk. And I think we all understand  
17 that almost over 90 percent of the fatal injuries in horse  
18 racing have preexisting pathologies at the site of the fatal  
19 injury. Why are our veterinarians missing those particular  
20 signs? For that matter, why are the jockeys and trainers?

21           You have a wealth of background information on this.  
22 I don't want to go through the whole spiel. I can give you the  
23 long version, but this is supported by the ARCI. It was  
24 adopted as a national model rule for both Phenylbutazone at two  
25 micrograms and flunixin at 20 nanograms per mL. It's supported

1 by the Jockey Club Safety Committee. It's supported by the  
2 RMTC. It's supported by the American Association of Equine  
3 Practitioners. It's supported by TOBA. And it will be a  
4 requirement of the Graded Stakes Committee as of July --  
5 January 1, 2012.

6 This has been an issue that was debated quite  
7 extensively and the medication committee. I've had meetings  
8 with the TOC and CTT on this issue and they're well aware as  
9 when the ARCI adopted this as a model rule that the proposal  
10 would go forward here in California. In fact, as Chairman of  
11 the Track Safety and Medication Committee Derek knows, as she's  
12 wanted to move forward on this months ago and we've waited for  
13 this to become a national policy.

14 So I encourage you to adopt this regulation. I would  
15 say that trainers are concerned that there will be a rash of  
16 positives because they're not used to a two microgram rule. I  
17 would point out that 85 percent of the horses currently meet  
18 the two microgram rule with a five microgram rule in place.

19 What we will do is we will have -- be able to -- and  
20 Dr. Stanley provides our official veterinarians with the level  
21 of each horse that runs. Trainers can come in and find out  
22 which of the horses are over two micrograms during the notice  
23 period so we have plenty of time to adapt to this.

24 What the real issue is, is how -- what kind of  
25 sanctions will be in place for violations of these rules. I

1 think that from my perspective I'd certainly support the  
2 horsemen, that we be open minded about this. I really don't  
3 care what the severity of the rule is or how minor the rule is  
4 as long as we get compliance. And I'm certainly willing to  
5 work with the horsemen on this. And I think Commissioner Derek  
6 is as well and Commissioner Harris. So I encourage you to  
7 adopt this rule.

8 CHAIR BRACKPOOL: I want to clarify one thing, Dr.  
9 Arthur. We're not being asked to adopt this rule today.

10 MS. WAGNER: No.

11 CHAIR BRACKPOOL: What we're being asked to do is to  
12 direct staff to initiate a 45-day comment period for the  
13 proposed amendment where the public get to comment. So it is  
14 not on our agenda today to adopt the rule.

15 DR. ARTHUR: You're absolutely right. I misspoke. I  
16 understand the process. And -- and the reason we have to start  
17 is because these take months. If everything goes smoothly, if  
18 we have just --

19 CHAIR BRACKPOOL: I'm just clarifying --

20 DR. ARTHUR: Right. I --

21 CHAIR BRACKPOOL: -- for the record what we're being  
22 asked to do.

23 DR. ARTHUR: Right. It takes a long while to get  
24 these things through the process.

25 CHAIR BRACKPOOL: I understand.

1 DR. ARTHUR: If anyone has any questions I'd be happy  
2 to ask -- answer them.

3 CHAIR BRACKPOOL: If you'd wait there we have several  
4 speakers on this issue.

5 John, would you like to --

6 COMMISSIONER HARRIS: Well, I --

7 CHAIR BRACKPOOL: -- ask something before --

8 COMMISSIONER HARRIS: Yeah. I have studied the  
9 material and support the rule. I think as I understand it  
10 essentially this will not change the normal practice of a  
11 trainer or veterinarian as far as a therapeutic dose at least  
12 24 hours out would still will end up with a two?

13 DR. ARTHUR: A two -- a two gram dose at 24 hours  
14 will not go over the limit if it's an IV injection. What they  
15 typically do in the states that have had this rule, and there's  
16 probably been over a million horses run with the two microgram  
17 rule that's already in place in -- it has always been in place  
18 in Maryland, New Jersey, Delaware and other states, is rather  
19 than give the Phenylbutazone the afternoon before the race it's  
20 administered the morning before the race. You basically cut  
21 back the administration about one-half life. That's correct.

22 COMMISSIONER HARRIS: But our rule is that you're not  
23 supposed to administer anything within --

24 DR. ARTHUR: Within --

25 COMMISSIONER HARRIS: -- that 24 hour period.

1 DR. ARTHUR: That's right.

2 COMMISSIONER HARRIS: So they were in violation of  
3 that aspect of it anyway. But would -- how about if someone  
4 gave paste Phenylbutazone more than 24 hours out, would that  
5 have a different effect?

6 DR. ARTHUR: Yes. Because the paste is absorbed so  
7 much more slowly --

8 COMMISSIONER HARRIS: Uh-huh.

9 DR. ARTHUR: -- a trainer would be at greater risk if  
10 they used paste than an IV injection. Most of the  
11 administrations are IV injections. Oral medications are the  
12 cause of almost all of our positives anyway. But you could  
13 meet it -- meet that requirement if you lowered the dose. So  
14 it still is quite easy to obtain or meet the regulations.

15 COMMISSIONER HARRIS: Yeah.

16 CHAIR BRACKPOOL: Okay.

17 DR. ARTHUR: And we will have an opportunity to help  
18 the trainers learn that process.

19 COMMISSIONER HARRIS: Were going to get all the  
20 comments on it and everything. But that's one of the key  
21 points, I think, that's not going to drastically change our  
22 procedures, and it should help us better identify unsound  
23 horses in the morning exams.

24 VICE CHAIR ISRAEL: John, I've --

25 CHAIR BRACKPOOL: Commissioner Israel.

1           VICE CHAIR ISRAEL:  -- I've discussed this with some  
2 trainers.  I just -- I'll start by saying I'm willing to put it  
3 out for comment but I do have some concerns about the  
4 unintended consequences.

5           As I understand it, many trainers use the oral method  
6 of providing the Bute to the horses and they're not going to be  
7 able to do that anymore.  So there's going to be an added  
8 expense for owners and trainers.  Vets are going to have  
9 administer the drug intravenously, as I understand; is that  
10 correct?

11           MR. STANLEY:  No, that's not necessarily the case.

12           CHAIR BRACKPOOL:  State your name for the record  
13 please.

14           MR. STANLEY:  I'm sorry.  Scott Stanley for  
15 University of California, Davis.  That's not necessarily the  
16 case.  It may change the procedure in which they administer it,  
17 the timeline, but they'd still be able to do that.  We'll  
18 provide them the information they need in order to use the oral  
19 products.

20           The real issue is, is we want to make sure that the  
21 plasma level they have at the time of the inspection is  
22 appropriate with them doing a proper inspection and not be  
23 masking potentially any --

24           VICE CHAIR ISRAEL:  What's the economic impact?

25           MR. STANLEY:  Economic impact?  For about eight years

1 we've recommended that the last dose of Phenylbutazone be given  
2 IV. That's been the recommendation for California for nearly a  
3 decade now. But they can continue to use the oral products if  
4 they want to with a slight adjustment of treatment time.

5 VICE CHAIR ISRAEL: That didn't answer my question.

6 CHAIR BRACKPOOL: Treatment time.

7 DR. ARTHUR: Well, I can answer your question. I ran  
8 a practice for 30 years.

9 VICE CHAIR ISRAEL: Okay. How much more expensive is  
10 it to administer --

11 DR. ARTHUR: Almost all the horses are administered  
12 Bute IV. There are some trainers that use the oral medication.  
13 In my practice less than one percent of my total practice was  
14 ever Phenylbutazone injection.

15 VICE CHAIR ISRAEL: Right.

16 DR. ARTHUR: So --

17 VICE CHAIR ISRAEL: How much more is it to administer  
18 the injection than to administer it orally?

19 DR. ARTHUR: If you use -- if you use pills it is --  
20 it costs about 40 cents a gram. If you use injection, it's  
21 probably \$5.00 to \$10.00 a gram.

22 VICE CHAIR ISRAEL: That's, in other words, a  
23 significant difference.

24 DR. ARTHUR: It would -- no. I wouldn't say it's  
25 significant at all in relationship to veterinary bills.

1           VICE CHAIR ISRAEL:  Something costs 40 cents to  
2 something costs \$5.00 to \$10.00, that's not a significant  
3 difference?

4           CHAIR BRACKPOOL:  Right.  The --

5           DR. ARTHUR:  No.  No, it isn't.  It really -- it is  
6 not.  It is not a significant difference when you consider the  
7 average horse has a \$500 a month vet bill.

8           CHAIR BRACKPOOL:  Yeah.  But -- but leaving that  
9 aside, just --

10          VICE CHAIR ISRAEL:  Yeah.

11          CHAIR BRACKPOOL:  -- just answer the question.  Just  
12 answer the question, in that --

13          VICE CHAIR ISRAEL:  How much more is it going to  
14 cost --

15          CHAIR BRACKPOOL:  -- how much more?

16          VICE CHAIR ISRAEL:  -- to give a dose  
17 intravenously --

18          CHAIR BRACKPOOL:  Right.  Right.

19          VICE CHAIR ISRAEL:  -- than a dose orally?

20          CHAIR BRACKPOOL:  Not per gram, just a dose.

21          DR. ARTHUR:  It's going to cost a difference between  
22 \$1.00 and about \$15.00 to \$20.00 dollars.  I don't know what  
23 vets charge for Bute today.

24          VICE CHAIR ISRAEL:  One of the issues is, is only a  
25 veterinarian can give an injectable --

1 VICE CHAIR ISRAEL: Yes. That's right.

2 COMMISSIONER HARRIS: -- something.

3 VICE CHAIR ISRAEL: So you got to pay the  
4 veterinarian.

5 COMMISSIONER HARRIS: That's the reason it's more.

6 VICE CHAIR ISRAEL: Yeah.

7 COMMISSIONER HARRIS: But -- but keep in mind that  
8 not -- some trainers might have a horse on Bute with no  
9 intention of running it in the next few days. So that -- I  
10 think that the oral administrations are not really designed for  
11 running a horse on it; it's just sort of a therapeutic use of  
12 it.

13 COMMISSIONER ROSENBERG: Well, can I ask a question  
14 of the gentleman from --

15 CHAIR BRACKPOOL: Commissioner Rosenberg.

16 COMMISSIONER ROSENBERG: -- from Davis. You said  
17 that you will -- could give instructions to trainers as to the  
18 timeline as to when to give them oral Bute; did you say that?

19 MR. STANLEY: That's correct. They still use --

20 COMMISSIONER ROSENBERG: Do you know what that  
21 timeline is?

22 MR. STANLEY: -- the oral product with a slight  
23 adjustment of time of the administration.

24 COMMISSIONER ROSENBERG: So do you have an idea  
25 what --

1 CHAIR BRACKPOOL: What would that slight adjustment  
2 be?

3 COMMISSIONER ROSENBERG: Exactly.

4 MR. STANLEY: I'd have to see right, now but it's  
5 probably, you're looking about a half-life, so probably in the  
6 range of six to eight hours.

7 COMMISSIONER ROSENBERG: That's the difference. So  
8 the -- the economic cost could be zero.

9 CHAIR BRACKPOOL: Right. If it's --

10 VICE CHAIR ISRAEL: Earlier.

11 COMMISSIONER ROSENBERG: Six hours difference.

12 VICE CHAIR ISRAEL: Earlier. Yeah.

13 COMMISSIONER ROSENBERG: Yeah. Okay.

14 CHAIR BRACKPOOL: We have several public speakers  
15 requested on this, so if you gentlemen would stay.

16 The first speaker card I have is Dr. Dana Stead.

17 COMMISSIONER HARRIS: Has all this material been out  
18 yet or are going to put this out?

19 CHAIR BRACKPOOL: We're going to put this out.

20 COMMISSIONER HARRIS: But I don't know if, I mean,  
21 obviously people should be able to speak now, but it would be  
22 helpful if they can review the material first.

23 CHAIR BRACKPOOL: Dr. Stead.

24 DR. STEAD: Good day.

25 CHAIR BRACKPOOL: If you'd state your name and

1 affiliation.

2 DR. STEAD: Dana Stead. I'm the Track Veterinarian  
3 for Santa Anita, Hollywood Park, Del Mar.

4 CHAIR BRACKPOOL: Please go ahead.

5 DR. STEAD: It's our concern that with morning  
6 examinations that the Bute level of two micrograms would be  
7 advantageous for our morning exams. Because when we're having  
8 horses in the afternoons that are running two, three, four  
9 micrograms, that they're coming back at post-race or with post-  
10 race samples, those levels are much higher in the morning and  
11 can therefore affect our morning examinations and skew the --  
12 skew our efforts to show a more, you know, just more leniency  
13 to horses that probably in the afternoon wouldn't be acceptable  
14 if they were examined at that point. So that's my feeling on  
15 the situation.

16 VICE CHAIR ISRAEL: So in layman's terms, Dana,  
17 you're just not able to determine whether or a horse is lame or  
18 sound --

19 DR. STEAD: I think there --

20 VICE CHAIR ISRAEL: -- or because of the amount?

21 DR. STEAD: There is -- there is an affect, yeah --

22 VICE CHAIR ISRAEL: Yeah. Yeah.

23 DR. STEAD: -- to somewhat mute the -- the lameness  
24 in the mornings.

25 VICE CHAIR ISRAEL: Okay. Thank you.

1 CHAIR BRACKPOOL: Thank you.

2 DR. STEAD: Thank you.

3 CHAIR BRACKPOOL: Next speaker, Dr. Jill Bailey.

4 DR. BAILEY: Jill Bailey, CHRB veterinarian. I  
5 agree with -- concur with Dr. Stead completely. For me, I've  
6 noticed in getting back the blood -- blood level results from  
7 working horses that are working taken off the vets list, we can  
8 correlate pretty closely with how well the horse looked and  
9 what the level was. I do think that it makes a difference.

10 My office has heard from some of the veterinarians  
11 that they feel the Bute level really doesn't affect the  
12 soundness of a horse and I disagree with that very strongly.  
13 So -- also it is true that the vast majority are running at  
14 less than two already. That makes me more comfortable. It  
15 gives me more assurance in looking at horses in the morning.  
16 However, we don't know who is at that lower level and who was  
17 at higher level. So we would have a better idea, I think, if  
18 they were all at a lower level. So I would encourage it very  
19 strongly.

20 CHAIR BRACKPOOL: Thank you. Next speaker I have is  
21 Pablo Suarez from the TOC. It says TOC, so I'm assuming you're  
22 speaking on behalf of the TOC.

23 MR. SUAREZ: I am. Correct. Thank you. Hi  
24 everyone. My name is Pablo Suarez. I'm the TOC Secretary, and  
25 also the Chair of the Medication Committee. As you know the

1 TOC in California has a long history of implementing medication  
2 guidelines and in many ways set the standards for the nation.  
3 We are very proud of that fact and want to continue moving  
4 forward with medication issues that promote the health of the  
5 horse and benefit horsemen.

6           With that in mind, the TOC voted against lowering the  
7 Bute level with a long-term health of each race horse in mind.  
8 Our position remains the same today. However, we recognize  
9 that our opinion is in the minority of what the RMTC has  
10 proposed and what ARCI has recommended. And since then we've  
11 had productive meetings with Dr. Arthur, and then with -- with  
12 the CTT, who feel the same as we do. We feel that we are  
13 moving forward on this issue quickly. However, there are some  
14 details that need to be addressed before this gets put out for  
15 public comment, most importantly the penalty guidelines.

16           We ask that this matter be pout off until the next  
17 Board meeting. I understand Honorable Jerry Moss is not here  
18 and I know he has a strong opinion on this matter, as well.  
19 This matter is supposed to be implemented for -- in January  
20 2012, so we feel we have enough time in order to do that.  
21 During that time I promise to continue to work with Dr. Arthur  
22 and the CTT so we can all possibly have the groundwork laid out  
23 and ready before the 45-day comment period.

24           Again, I urge this Board to put this matter off. And  
25 as strange as it sounds, it's possible that we can all get

1 together and have as less opposition on this as possible moving  
2 forward if we can put this matter off, because we were caught  
3 off guard that this was going to be on this meeting today.  
4 Thank you.

5 CHAIR BRACKPOOL: Thank you. Next speaker, John  
6 Sadler, CTT.

7 (Colloquy Between Board Members)

8 MR. SADLER: John Sadler, President, CTT. We think  
9 this is a bad idea. We don't support it. It doesn't have --  
10 very little support amongst any of the horsemen, north or  
11 south. We had a meeting a couple months ago in the northern  
12 part up at Golden Gate and we just think this is a very poor  
13 idea. Let me just read you the first line of this handout  
14 we're going to give you.

15 "The national HBPA position. The HBPA Board  
16 of Directors determined there was no scientific  
17 evidence that the current level affects the accuracy  
18 of pre-race exams."

19 I don't know if anybody looked at the *Form* today. I  
20 think they're talking about cutting Santa Anita. We're  
21 painfully thin with horses here right now. And if we go  
22 reaching for more regulations right at this moment we're going  
23 to have less horses. I mean, that's just the fact.

24 We think -- we have a good rule here in California  
25 currently. No horsemen are complaining about the rule that we

1 have currently. It's a good therapeutic medication. We have  
2 great testing for it, and we think this is a stretch. And it  
3 has very little support amongst the horsemen.

4 VICE CHAIR ISRAEL: John, can I ask you a question?

5 MR. SADLER: Yes.

6 VICE CHAIR ISRAEL: Have you done any kind of a  
7 survey or is there any available statistical information about  
8 what the effect will be on the entry box? How many horses  
9 won't run?

10 MR. SADLER: Well, every -- every time you add more  
11 regulations in this -- this economy --

12 VICE CHAIR ISRAEL: I understand that. But has  
13 anybody done any kind of research on this at all?

14 MR. SADLER: On -- on how many horses will leave?

15 VICE CHAIR ISRAEL: No. How many horses will not be  
16 eligible to run? How many entries will we lose on a daily or  
17 weekly basis?

18 MR. SADLER: Well, we've been asking, I think, our  
19 board has been asking Dr. Arthur for some of -- some of these  
20 results on his testing that we're not getting -- we're not  
21 getting the medical records we'd like to see.

22 VICE CHAIR ISRAEL: Well, I mean, because I'm  
23 curious. Is the adverse impact five percent, two percent of --  
24 of --

25 MR. SADLER: Well, I mean, we're painfully thin here,

1 you know that.

2 VICE CHAIR ISRAEL: Well, I understand that --

3 MR. SADLER: Yeah. Okay.

4 VICE CHAIR ISRAEL: -- clearly. But --

5 MR. SADLER: But just to put more regulations on us  
6 is going to -- is just -- it's not -- there's -- I don't think  
7 anybody can say this is going to have a positive effect on  
8 field size or handle. That used to be a sign here last year  
9 when Commissioner Brackpool came in talking about this Board  
10 wanted to promote racing, and I think this is just a stretch.

11 CHAIR BRACKPOOL: Commissioner Derek?

12 COMMISSIONER DEREK: Yes. I'm curious. The purpose  
13 of this is for the pre-race exam and the soundness of horses.  
14 So if you're saying that there will be fewer horses in the  
15 field and in racing that's because they didn't pass a pre-race  
16 exam, and I think that's probably a positive thing.

17 MR. SADLER: Well, I mean, you know, what happens is,  
18 is that, you know, in Europe, they race on no medication, but  
19 they race six months a year and they race two or three days a  
20 week. You know, if we go to no medication then we need a  
21 schedule that -- that accommodates that. But you can't -- what  
22 happens is, is the race tracks come in and ask for all these  
23 dates and they say if we don't get them we can't make it.  
24 So --

25 COMMISSIONER ROSENBERG: I have a question.

1 MR. SADLER: -- you know --

2 CHAIR BRACKPOOL: Well, now we're mixing -- we're  
3 mixing subjects.

4 COMMISSIONER DEREK: Yeah.

5 MR. SADLER: But --

6 CHAIR BRACKPOOL: Commissioner Rosenberg.

7 COMMISSIONER ROSENBERG: I was going to ask a  
8 question on the European statistics. So if in Europe they race  
9 for six -- without any medication --

10 MR. SADLER: Right.

11 COMMISSIONER ROSENBERG: -- and they race six months  
12 a year, two or three times a week, and here we race year round  
13 and horses seem to start once every three to four weeks, what's  
14 the difference?

15 MR. SADLER: Well, the difference is, is that  
16 during -- when they're not racing they don't have to train  
17 them, you know, so they can -- they can be just resting up.

18 COMMISSIONER ROSENBERG: So you're saying that  
19 Commissioner Derek's question -- Derek's question was you're --  
20 what's your -- why do you think it's so positive to have the  
21 extra Bute and Banamine in their systems pre-race?

22 MR. SADLER: Well, I mean --

23 COMMISSIONER ROSENBERG: Why is it so positive?

24 MR. SADLER: I mean, if you look at the economic  
25 thing, you know, I mean, you know, nobody is here speaking for

1 those poor trainers up -- on the fairs. You know, giving the  
2 Bute pills or the Bute paste versus a shot, it means a lot to  
3 those people. So I mean, that's one of the economic things  
4 we're talking about and --

5 CHAIR BRACKPOOL: Well, we just had testimony,  
6 though, from UC Davis that said you can still use the oral  
7 method, you just need to do it six hours earlier.

8 MR. SADLER: Yeah. I -- I understand that. But what  
9 I'm saying is, is that we just think this is going to have a  
10 negative effect. We don't think we have a big problem, you  
11 know, and this is what -- what the horsemen feel. These are  
12 the guys in the trenches. We don't think this is necessary.

13 CHAIR BRACKPOOL: Right. Thank you, John. Next  
14 speaker, Carlo Fisco, CTT.

15 Is this additive to the CTT position that John  
16 just --

17 MR. FISCO: It's separate, Mr. Chairman.

18 CHAIR BRACKPOOL: Okay. Okay.

19 MR. FISCO: Good morning, and good morning to the  
20 Board. Just touching briefly on the --

21 MS. WAGNER: Can you state your name please?

22 MR. FISCO: Pardon me. Carlo Fisco, CTT. Touching  
23 briefly on the scientific issue, CTT, at a minimum, that issue  
24 in a best case scenario is not without its controversy. CTT,  
25 after meeting with the Medication Committee at Golden Gate in

1 May of 2010, shortly thereafter began an attempt to attempt to  
2 attain via public records' request documents relevant to this  
3 issue as far as Bute and musculoskeletal injuries. Those PRE's  
4 are still outstanding. There's no indication that we will be  
5 receiving those documents within the 45-day period.

6           The -- we have spoken to people concerning the  
7 scientific issue. We'd like to have ample time to develop  
8 that. I can say unequivocally that there are problems with the  
9 presentation as made to the Board today. You're getting one  
10 side of the story. We'd like to have the attempt to present  
11 our side of the story.

12           In addition, there are legal obligation on this Board  
13 under California Law why this matter is not ripe for sending  
14 out for public comment period. 1844 is the rule which you are  
15 attempting to amend. That is the Bute rule. However, as  
16 required by law you have to propose amendments on any rules  
17 which will be affected by this law. 1843.3 is the penalty rule  
18 of the CHRB.

19           What you're proposing to do here today is to amend  
20 the Bute rule without amending the penalty rule. We have no  
21 idea what's in store for the collateral rule that goes with  
22 1844. You're obligated under the law to take that into  
23 consideration. In addition, under California law you're also  
24 obligated, prior to sending out for public comment, involvement  
25 of the parties that are going to be affected by the law, and

1 that hasn't been done. There's been some preliminary  
2 discussions between Dr. Arthur, Dr. Shields and Pablo Suarez,  
3 but not to the extent that it's called for under the statute.

4           And so taking those three things into consideration  
5 this matter is not ripe for sending out at this point. It may  
6 be ripe in the near future at -- at another meeting and that's  
7 been touched upon by the speakers that the penalty rule has not  
8 been addressed at all. And --

9           CHAIR BRACKPOOL: Well, let me clarify a couple of  
10 things and then I'll ask some questions of some -- some  
11 commissioners here.

12           Again, in that presentation you referred a couple of  
13 times to the fact that we were ready to amend the rule, and  
14 then a couple times you correctly stated that our proposal --  
15 the recommendation from staff is that we send it out for  
16 comment. We're -- we're not here today to amend any rule. I  
17 want to make that clear. And if you misspoke, that's okay.  
18 But I just want to make that very clear that we're not here to  
19 amend a rule today. We're here to talk about whether or not we  
20 send a rule out for public comment. Just want to make that  
21 clear.

22           MR. FISCO: Yes. That's understood. Thank you.

23           CHAIR BRACKPOOL: The second thing is I want to ask  
24 Commissioner Derek, my understanding that the Medication and  
25 Safety Committee chaired by Commissioner Derek with

1 Commissioner Harris on board have held several hearings on this  
2 issue. TOC, CTT, various other horsemen have been at those. I  
3 believe that to be correct.

4 So to say that there has been no involvement may not  
5 be the involvement you like because we all have a position in  
6 life we want to take on, something. But I -- there definitely  
7 has been involvement so I just wanted to clear those two things  
8 up before I go any further. Commissioner Harris?

9 COMMISSIONER HARRIS: Plus I think I don't quite buy  
10 the concept that we shouldn't put something up for comment  
11 knowing that it's not going to be finalized for quite a while.  
12 What's the disadvantage of not letting everybody in on the  
13 discussion, let everybody review the materials? I mean, that's  
14 the best form of government. Rather than say look, we don't  
15 want anybody to look at it until we're ready to have you look  
16 at it, I'm not clear what you want that you don't have that's  
17 being withheld from you.

18 COMMISSIONER DEREK: Right.

19 MR. FISCO: Well, very simple, the incompleteness is  
20 twofold. Number one, we have not received the documentation of  
21 our PRA request which forms the --

22 COMMISSIONER HARRIS: What's a P --

23 CHAIR BRACKPOOL: Public record request.

24 COMMISSIONER HARRIS: Public records request.

25 MR. FISCO: Public record request --

1 COMMISSIONER HARRIS: Of who?

2 MR. FISCO: -- which forms the basis of our contrary  
3 opinion. And secondly, there's no -- there's no rule of  
4 1843.3.

5 CHAIR BRACKPOOL: Okay. Well, I mean, hold it there  
6 one second. I have a response to that. Commissioner Choper  
7 has a point.

8 COMMISSIONER CHOPER: Well, first I have a question.  
9 What is in that public -- would you repeat that? You probably  
10 said it, I apologize. What are you seeking in the public  
11 records?

12 MR. FISCO: We are seeking documentation on the  
13 connection between Phenylbutazone usage and injuries to the  
14 horse in California.

15 COMMISSIONER CHOPER: Yeah. Well --

16 MR. FISOC: -- and it's much more detailed than that.  
17 I'd be glad to provide the Board with a copy of our letter.

18 COMMISSIONER CHOPER: Well, to the extent that  
19 someone would respond to Commissioner Derek's question, you  
20 know, it seems to me it goes to the heart of this, and that is,  
21 is there any evidence, data, maybe that's what you're looking  
22 for, at the fact that we would have increased -- we would have  
23 reduced injuries, if you will, if we reduced the nanograms from  
24 five to two. I mean, Mr. Sadler's said it's an economic  
25 question. I mean, I don't -- I take it that means, well, you

1 have to run the risk that horses break down in order to run  
2 them. Now maybe I'm wrong about that but --

3 COMMISSIONER DEREK: That -- that was the argument  
4 that was being. Yeah.

5 COMMISSIONER CHOPER: But I --

6 CHAIR BRACKPOOL: Well, we've actually got three --  
7 we've actually had -- you three asked to speak together in a  
8 certain -- your presentation, and you've actually said, I  
9 think, three very different things. So I just, for  
10 clarification, want to understand.

11 Pablo Suarez stood up and said I think we're close, I  
12 think we can work this out. We just need the next month to all  
13 sit down and work this out and I think we can get there. John  
14 Sadler stood up and said no way would we ever be in favor of  
15 this regulation. We don't believe it's necessary. And you've  
16 stood up and raised a lot of legal issues that I would have to  
17 take advice from counsel as to the merit or lack thereof of any  
18 of the points you've raised to say why it shouldn't go ahead.

19 MR. FISCO: Well, I'm not sure --

20 CHAIR BRACKPOOL: So there are three different --  
21 there are three different positions.

22 COMMISSIONER CHOPER: Let me -- let me just --

23 CHAIR BRACKPOOL: Commission Choper.

24 COMMISSIONER CHOPER: -- just finish up this. So  
25 look, my experience here for the last four years is nothing

1 happens for 45 days anyway. So -- and I don't think there's  
2 anything wrong really or inconsistent with what you're talking  
3 about by putting it out for the 45 days. Who knows? You know,  
4 maybe everybody will come back and say we're fully informed.  
5 If they're not we often put it out for another 45 days. That's  
6 not -- and I would be interested in getting, Dr. Arthur, the  
7 information if it's there. I mean, I'm skeptical that you are  
8 going to find that, you know, statistics that will support the  
9 proposition that if we reduce it to five to two, fewer horses  
10 are going to be injured. But if it's there or if the contrary is  
11 there, it would be pretty valuable to hear that.

12 MR. FISCO: You know, and --

13 COMMISSIONER CHOPER: And your point about the -- the  
14 statute, you may know about -- more about this than I do, but  
15 the penalty seems to me, you change this and don't change the  
16 penalty, penalty remains the same. I don't think we've -- I  
17 mean, that --

18 COMMISSIONER DEREK: Uh-huh.

19 COMMISSIONER CHOPER: -- that that's implicit, and I  
20 don't think we've breached any obligation if that's --  
21 what is going to be is going to be. Now you can -- you know,  
22 maybe you want to change that, but that's -- so you put in an  
23 amendment the next time around and that again, you know,  
24 starts -- starts the 45 days rolling again.

25 MR. FISCO: And that's the point, Professor Choper.

1 If you want to send out 1844 without dealing with the penalty,  
2 there's no logic to that. We have no idea what to expect.

3 There's been --

4 COMMISSIONER CHOPER: Well, what did you assume about  
5 the penalties?

6 MR. FISCO: There's been --

7 CHAIR BRACKPOOL: Dr. Arthur.

8 DR. ARTHUR: Should I -- should I respond to that?

9 CHAIR BRACKPOOL: Please.

10 DR. ARTHUR: First of all, with --

11 COMMISSIONER CHOPER: I guess my -- yeah.

12 DR. ARTHUR: Sure. Within the penalty guidelines  
13 it's already covered because there are penalties for Class C  
14 violations, which are covered under here. There are more  
15 specific ways that non-steroid anti-inflammatories are handled,  
16 and that is sort of a refinement of that. And during that  
17 period of time, and I think Commissioner Derek and Commissioner  
18 Harris are aware, that we would be willing to work with the  
19 horsemen and -- and try to figure out those -- a modification  
20 of those penalties. But those penalties are already there.

21 In terms of the scientific information, I mean, we --  
22 I've been through this debate. I've debated Darrell Vienna and  
23 Don -- Dr. Shields at Minnesota before the national HBPA. I  
24 will say that fairly prestigious group of people have looked at  
25 the science of this and agreed with it. And I've given you

1 review, a meta-analysis by Dr. Larry Solomon, the University of  
2 Pennsylvania. That's actually been updated and it's been  
3 approved for publication in the *Journal of Veterinary*  
4 *Therapeutics and Pharmacology*. And it is expanded and it comes  
5 to the very same conclusion, and that is that there is evidence  
6 that the Phenylbutazone levels that we permit in horse racing  
7 compromise the clinical examination.

8           And doctor -- or John Sadler talked about the poor  
9 horsemen up there that may not be able to run their sore  
10 horses. I'm worried about the poor horses myself. Ninety  
11 percent of our horses have preexisting pathology at the site of  
12 their fatal injury. Why aren't our veterinarians picking that  
13 up? That is the issue, and that's what we're talking about.

14           CHAIR BRACKPOOL: Yeah.

15           COMMISSIONER DEREK: Is --

16           CHAIR BRACKPOOL: Commissioner Choper has a point,  
17 and then Commissioner Rosenberg.

18           COMMISSIONER CHOPER: I think we're spending a lot of  
19 time about the 45 days. All of these points can be brought up.

20           CHAIR BRACKPOOL: Right.

21           COMMISSIONER CHOPER: Let's send -- I think we just  
22 ought to send it out for the 45 days and see what happens. If  
23 you got stuff that wasn't brought up and got to be discussed  
24 further it will go out for another 45 days.

25           I want to say one thing from the standpoint of a

1 better. You know, I -- we like big fields. True. But I'll  
2 tell you, you ain't very happy when your horse breaks down.

3 CHAIR BRACKPOOL: Commissioner Rosenberg.

4 COMMISSIONER ROSENBERG: Yeah. Dr. Arthur, Mr. Fisco  
5 made some reference to specific information they've requested,  
6 I presume from the CHRB.

7 MR. FISCO: We've requested it at the CHRB and the  
8 University of California at Davis.

9 COMMISSIONER ROSENBERG: Okay. So --

10 MR. FISCO: Dr. Arthur works for both entities.

11 COMMISSIONER HARRIS: It sounds to me on that, that  
12 what you're trying to do is, is do your own study of varying  
13 levels and what the --

14 COMMISSIONER ROSENBERG: He's asking for information.

15 COMMISSIONER HARRIS: -- impact was, or do you  
16 want -- do you want to study --

17 COMMISSIONER ROSENBERG: He wants the information  
18 that Dr. Arthur is relying on, some of which he gave us.

19 COMMISSIONER HARRIS: Well, I'm not sure what your  
20 actual request is for that we're not providing.

21 COMMISSIONER ROSENBERG: Well, wait a minute. The  
22 point is --

23 MR. FISCO: Commissioner Rosenberg --

24 COMMISSIONER ROSENBERG: -- if they made the  
25 request --

1           CHAIR BRACKPOOL: Hold on. Let's let Commissioner  
2 Rosenberg ask this question.

3           COMMISSIONER ROSENBERG: -- they should have the  
4 information that -- that we should either -- we should respond  
5 to them if we have the information, or if we don't have the  
6 information we should respond and say we don't have the  
7 information. Because it seems fair that -- that they have this  
8 information during the 45 day period. So if we put this out  
9 for the 45 days a condition of it should be to immediately get  
10 them to respond to this request.

11           DR. ARTHUR: Could I respond, first of all, to  
12 Commissioner Rosenberg. First of all, the PRAs go to the  
13 university, the chancellor, and they go through the university  
14 counsel, and he is handling -- that office is handling that.  
15 It -- it is not something that I do. They -- I assist in  
16 putting information together, and they are working on it. I  
17 just had a communication on this issue just a few days ago.

18           I think when you see what the PRA is, what Carlo  
19 Fisco sent out, and I certainly would hope that would be made  
20 public, I think you can see where the problem is, trying to  
21 answer all of the questions. I do know the university counsel  
22 has prepared a response. I don't know whether they've received  
23 it or not. That's not something I handle.

24           So in terms of the PRA I -- I -- we -- you know, all  
25 the information that I have they're going to have.

1 COMMISSIONER ROSENBERG: Do they have it now?

2 DR. ARTHUR: Yes.

3 COMMISSIONER ROSENBERG: Do they have information  
4 on --

5 DR. ARTHUR: The only -- the only issue would be --  
6 the only issue would be specific -- they -- they've asked for  
7 specific information in necropsy reports that Bob -- Counsel  
8 Bob Miller is aware of court decisions that impact that. Those  
9 are not my decisions. Those are the board's decisions and the  
10 PRA with the board. It's the university's decision in terms of  
11 information that the university holds and it's their policy.  
12 It has nothing to do with me.

13 COMMISSIONER ROSENBERG: Can you provide them with  
14 them with the information that's -- can we provide them with  
15 the information that's in our packet?

16 DR. ARTHUR: What's that?

17 COMMISSIONER ROSENBERG: The information that's in  
18 this packet, do they have this information?

19 DR. ARTHUR: Yes, they have all that. Yes.

20 That's --

21 COMMISSIONER ROSENBERG: Oh. Okay.

22 DR. ARTHUR: And that -- and that most of this, by  
23 the way, was -- is either public record or it was presented at  
24 our --

25 COMMISSIONER ROSENBERG: Okay.

1 DR. ARTHUR: -- our previous meeting.

2 COMMISSIONER ROSENBERG: I have a second question on  
3 particularly --

4 DR. ARTHUR: Certainly.

5 COMMISSIONER ROSENBERG: -- something about  
6 procedure, the penalty issue. If -- if the 45 days goes by and  
7 if it's put on the agenda for next time will there be a  
8 specific law drafted by staff for discussion?

9 DR. ARTHUR: Yes.

10 MS. WAGNER: Yes.

11 COMMISSIONER ROSENBERG: And will it include the  
12 penalty phase?

13 MS. WAGNER: Yes. That -- that's something that  
14 staff -- we were going to be working on -- on with Rick to  
15 propose an amendment to the penalty rule. We know that we have  
16 to address that per regulation.

17 COMMISSIONER ROSENBERG: So that satisfies that.

18 MS. WAGNER: We know that that is coming. There's  
19 nothing that says that that they have to run together.

20 COMMISSIONER ROSENBERG: Right.

21 MS. WAGNER: The rule making files do not have to run  
22 together. But that we are aware that needs to be done.

23 DR. ARTHUR: Okay. Can I -- I just want one more --  
24 to add one more thing in response to Commissioner Choper. Hong  
25 Kong, when they do their pre-race examinations, they have four

1 goals in pre-race examinations. Number one is to avoid late  
2 bet -- gate scratches. There was a vet scratch here at Santa  
3 Anita that cost \$600,000 at -- at Santa Anita Handicap day.  
4 The others have full fields which is something we don't have to  
5 deal with. They want AEs, also eligibles, to draw in. The  
6 third one is to make sure the betters get a fair run for their  
7 money. The last one is actually reducing catastrophic  
8 injuries. Those are their goals --

9 CHAIR BRACKPOOL: Thank you.

10 DR. ARTHUR: -- on their pre-racing examination.

11 CHAIR BRACKPOOL: Commissioner Derek?

12 COMMISSIONER DEREK: Yes. This will --

13 DR. ARTHUR: No medication and total access to  
14 medical records there.

15 COMMISSIONER DEREK: This rule already is enforced in  
16 other states. I don't know exactly which ones. Dr. Arthur can  
17 mention them. It's coming here to California anyway in graded  
18 stakes races as of January.

19 And are you completely unaware of that, that the --  
20 the ARCI and their recommendation and why they recommended  
21 that? It doesn't seem feasible that you wouldn't be aware of  
22 how they came to this decision.

23 MR. FISCO: Let me -- let me make two brief comments  
24 and -- to end this. As to the --

25 VICE CHAIR ISRAEL: Well --

1 CHAIR BRACKPOOL: Can you respond to Commissioner  
2 Derek's --

3 MR. FISCO: Yes.

4 CHAIR BRACKPOOL: -- question?

5 VICE CHAIR ISRAEL: We'll decide when it's over.

6 CHAIR BRACKPOOL: Right.

7 MR. FISCO: We are -- at least my presentation.

8 VICE CHAIR ISRAEL: Okay.

9 MR. FISCO: That's what I was referring to.

10 VICE CHAIR ISRAEL: Yeah.

11 MR. FISCO: We are aware. We are -- we're also aware  
12 that there have been instances already where the reduced Bute  
13 level in other states have resulted in very minor overages  
14 under the five level which have implicated horsemen for these  
15 very minor levels. To repeat what Dr. Arthur presented to your  
16 Board, 85 percent of the horses at the time of the pre-race  
17 exam are at or under the 2.0 level, and that is a very  
18 important statistic.

19 But let me say as to the science, this was not a  
20 reactive thing by the CTT. We didn't listen in May and say,  
21 okay, we've got to scurry out and figure out a way to beat this  
22 thing. We talked to people who said the science is not there;  
23 we're trying to fill in the gaps with the science.

24 And let me conclude to Professor Choper, it's my  
25 position and it's in the government code of the APA that by

1 definition you can not send this out because you have not met  
2 the obligations of disclosure, notice and the penalty rule that  
3 logically has to accompany this rule. And that's --

4 CHAIR BRACKPOOL: Well, I'm going to --

5 MR. FISCO: -- my position.

6 CHAIR BRACKPOOL: That's your -- that's your  
7 position. I'm going to ask counsel to give us his, as well.

8 MR. FISCO: Yes. And I -- I --

9 CHAIR BRACKPOOL: But that's -- but that's yours.

10 But thank you --

11 MR. FISCO: Yes.

12 CHAIR BRACKPOOL: -- very much, Carlo.

13 Commissioner Harris?

14 COMMISSIONER HARRIS: One thing I think we're missing  
15 here is or at least Mr. Fisco is missing, this level is not at  
16 the pre-race examination. The level is after the race --

17 COMMISSIONER DEREK: Post-race. Yeah.

18 COMMISSIONER HARRIS: -- which could well be, you  
19 know, seven, eight, nine hours after the pre-race examination.  
20 So -- so it may well be that the -- it's -- well, it certainly  
21 would be, it's going to be a higher level in a pre-race exam  
22 than -- than after the race. So I don't get the impression  
23 that this is -- is done at the time of the -- of the  
24 examination.

25 MR. FISCO: No. No. The -- it's done approximately

1 24 hours. The point is --

2 COMMISSIONER HARRIS: Well, no. Let's talk. Well,  
3 you got -- one thing is the -- the administration of the  
4 medication.

5 MR. FISCO: Correct.

6 COMMISSIONER HARRIS: That's at least 24 hours.

7 MR. FISCO: Right.

8 COMMISSIONER HARRIS: Now -- now when do you think  
9 that the pre-race exam is done?

10 MR. FISCO: The -- the administration is from five to  
11 two.

12 COMMISSIONER HARRIS: From what?

13 MR. FISCO: Five -- five to two, 5.0 to 2 that --  
14 that --

15 COMMISSIONER HARRIS: I know. What -- what time? If  
16 you were --

17 MR. FISCO: The pre --

18 COMMISSIONER HARRIS: -- overseeing this, what time  
19 would you have given it?

20 MR. FISCO: 24 hours.

21 COMMISSIONER HARRIS: Twenty-four hours. So what  
22 time would that be in a day?

23 MR. FISCO: No. It would be 24 hours before the  
24 race, so --

25 COMMISSIONER HARRIS: Okay. So like it's going to

1 run at 4:00 in the afternoon, you could do it at 4:00 in the  
2 afternoon or earlier before?

3 MR. FISCO: And the pre-race exam is done the day of  
4 the race.

5 COMMISSIONER HARRIS: Okay. So that might be -- but  
6 clearly the pre-race exam is -- is six or seven hours in front  
7 of the race.

8 VICE CHAIR ISRAEL: It's in the morning.

9 COMMISSIONER DEREK: So you've already got a half  
10 life there; right?

11 VICE CHAIR ISRAEL: It's in the morning.

12 COMMISSIONER HARRIS: Yeah. That's a half life.

13 VICE CHAIR ISRAEL: Right.

14 COMMISSIONER HARRIS: I mean, the -- the -- you're  
15 going to have a higher level in the pre-race exam, which is the  
16 whole point of the thing, than -- than it's going to have when  
17 the horse runs. So I think what we're concerned about is  
18 masking issues that -- that the pre-race exam needs to reveal.

19 MR. FISCO: That's -- well, that's -- that's been the  
20 premise upon which they're basing this proposal. But they've  
21 also stated that 85 percent of the horses are under the limit,  
22 so --

23 VICE CHAIR ISRAEL: Okay. I -- look, I want to  
24 change the subject a little bit. This is -- I want to ask a  
25 question of -- of Counsel Miller.

1 CHAIR BRACKPOOL: Thank you, Mr. Fisco. Thank you.

2 VICE CHAIR ISRAEL: I --

3 CHAIR BRACKPOOL: I know you want to speak, but I  
4 have --

5 VICE CHAIR ISRAEL: Yeah. I -- it's clear I have  
6 little patience for bureaucracy and not much interest in  
7 process. But I want to make sure we don't implement this and  
8 leave ourselves -- or vote for this to adopt this and -- and  
9 send it out for comment and then -- and then leave ourselves  
10 incapable of implementing it because we've violated some  
11 process. So I just want -- I want to hear from you that this  
12 is kosher.

13 MR. MILLER: This is kosher.

14 CHAIR BRACKPOOL: Name for the record though.  
15 Counsel?

16 MR. MILLER: Excuse me? Robert Miller, counsel for  
17 the CHRB.

18 CHAIR BRACKPOOL: And -- and we can do what is being  
19 asked of us?

20 MS. WAGNER: Absolutely.

21 MR. MILLER: Yes.

22 CHAIR BRACKPOOL: Okay.

23 MR. MILLER: You're putting it out for comment.

24 VICE CHAIR ISRAEL: Yeah.

25 CHAIR BRACKPOOL: Right. Right.

1 MR. MILLER: You're not adopting anything.

2 CHAIR BRACKPOOL: Right. I agree.

3 I have one more speaker on the -- on the issue, Jerry  
4 Jamgotchian.

5 MR. JAMGOTCHIAN: Mr. Chairman, Members of the Board,  
6 looking at this from the owner's perspective. And I had to sit  
7 down and ask myself if I really wanted to come up because I  
8 actually agree with Commissioner Derek in most regards. The  
9 issue is horse safety and medication control. That's what  
10 we're here for. We want safe races and we want medications  
11 that are safe for the horses. The goal is to provide horses to  
12 race. I mean, that's why we own race horses. The medications  
13 are needed. The question is: What's the amount that's needed?

14 Initially I thought this was kind of a money grab by  
15 the vets. I'm not sure that it isn't but it certainly could  
16 be. It seems like the solution here is something that would  
17 take some leadership by the Board and maybe the Board could  
18 consider leadership for a change. And the leadership would be  
19 that -- I think that in New York they administer Bute -- the  
20 state administers Bute with state veterinarians. It might be  
21 something that would help the integrity of horse racing in  
22 California, would provide the trainers on-time medication. It  
23 would also possibly make money for the state. And it would --  
24 it would bring some integrity back if, in fact, we knew that  
25 the veterinarians that were administering drugs, Bute, Lasix,

1 whatever, were doing so and not masking something else.

2           So maybe this Board from an owner's perspective would  
3 look at it not economically, but look at it from the integrity  
4 side to consider maybe the state taking this opportunity to  
5 bring some integrity and some safety back to the horses by  
6 administering this -- these medications on the states by --  
7 with state veterinarians. Thank you.

8           CHAIR BRACKPOOL: Mr. Suarez, you had a follow-up  
9 that I allowed you to have.

10           MR. SUAREZ: Thank you very much, Commissioner. I  
11 just wanted to respond to Commissioner Derek and -- on the --  
12 on the issue of this being a safety for the horse. As I stated  
13 before, the TOC has the horse's health as its primary concern.  
14 And the reason -- I wanted to state clearly our position. The  
15 reason that we oppose this rule was we felt that the lowering  
16 of the Bute level would create more joint injections by  
17 trainers and thus, you know, damaging the long-term health of  
18 the horse. I just wanted to be clear on our position.

19           COMMISSIONER DEREK: Thank you. And I -- I look  
20 forward to, in the 45-day period, discussing all of these.

21           MR. SUAREZ: Thank you.

22           CHAIR BRACKPOOL: Commissioner Rosenberg?

23           COMMISSIONER ROSENBERG: No one has brought up the  
24 Banamine issue. Does anybody have a problem with the reduction  
25 of Banamine? Any trainers or owners have a problem with that?

1                   COMMISSIONER HARRIS:  As I understand it the  
2 Banamine --

3                   CHAIR BRACKPOOL:  Apparently not.

4                   COMMISSIONER HARRIS:  -- doesn't do that much good  
5 unless you -- you give it closer to the 24 hours to a race.

6                   COMMISSIONER ROSENBERG:  So there's no objection to  
7 that?  Okay.

8                   COMMISSIONER HARRIS:  Well, it's not -- you're not --  
9 you couldn't -- it's not what -- really what people are doing  
10 for -- to race on.

11                  CHAIR BRACKPOOL:  As far as -- I am -- just so that  
12 we're crystal clear on this, if we put this out for 45-day  
13 comment, we have the 45-day comment, we would then at the  
14 earliest, at the April board meeting, the earliest, probably  
15 the May board meeting, be then asked to look at adopting the  
16 rule?

17                  MS. WAGNER:  That's correct.  That's correct.

18                  CHAIR BRACKPOOL:  And the rule we would be adopting  
19 would go into effect?

20                  MS. WAGNER:  The rule would -- after the Board would  
21 adopt it, it would have to be submitted to the Office of  
22 Administrative Law.  They have 30 days in which to --

23                  CHAIR BRACKPOOL:  No.  I thought we were proposing a  
24 slightly longer -- we're not -- we're proposing it goes in 30  
25 days after?

1 MS. WAGNER: They have 30 days --

2 CHAIR BRACKPOOL: Right.

3 MS. WAGNER: -- in which to review it in order to  
4 give an approval or a disapproval.

5 CHAIR BRACKPOOL: Right.

6 MS. WAGNER: And depending on what they say it would  
7 not become effective until 30 days after it's filed with the  
8 Secretary of State.

9 CHAIR BRACKPOOL: Right.

10 MS. WAGNER: So we're looking at another 60 days.

11 CHAIR BRACKPOOL: Right. And there would be nothing  
12 to stop us, because I know legally we don't have to change the  
13 penalties but we might want to change the penalties, so there  
14 would be nothing to stop us putting this out for comment today,  
15 starting to collect all the comments because I can tell on this  
16 issue, there are going to be many and they're going to -- it's  
17 going to be subject to another hearing, etcetera, but we could  
18 potentially at the March Board meeting put out a penalty  
19 guideline --

20 MS. WAGNER: Absolutely.

21 CHAIR BRACKPOOL: -- so that they were in there and  
22 so that people were actually able to look at the two --

23 MS. WAGNER: That's correct.

24 CHAIR BRACKPOOL: -- together, but the most  
25 importantly, we would start this debate because this is, as

1 Commissioner Choper said, not a debate that's going to go on --

2 COMMISSIONER HARRIS: Clearly we need to start --

3 CHAIR BRACKPOOL: -- for 45 days.

4 COMMISSIONER HARRIS: -- start the debate. Were

5 putting it out. We're not hurting anything.

6 CHAIR BRACKPOOL: Right.

7 COMMISSIONER HARRIS: But one of my gripes are this

8 Board in general is we put stuff out, nobody does their

9 homework, nobody does anything, they come back and they're

10 against it. And then we put it out again and fool around.

11 CHAIR BRACKPOOL: Yeah.

12 COMMISSIONER HARRIS: I would wager -- could everyone

13 hold up their hands if they've read any parts of this 51 page

14 summary of this thing we got in here? Well --

15 CHAIR BRACKPOOL: Right. Right.

16 COMMISSIONER HARRIS: A couple of the vest in front

17 have. But -- and what you got to do is go home and really read

18 it. I mean, maybe I -- I could see reasons for opposing it or

19 supporting it.

20 CHAIR BRACKPOOL: Okay.

21 COMMISSIONER HARRIS: But -- but really do your

22 homework.

23 CHAIR BRACKPOOL: Well, do I --

24 VICE CHAIR ISRAEL: I just want to make sure that

25 Keith's question is answered by an attorney.

1           We will not jeopardize our ability to implement this  
2 regulation if we put it out for comment today because we  
3 haven't also concurrently put out a change in the penalty?

4           MR. MILLER: Robert Miller, Counsel for the Board.  
5 That is correct.

6           VICE CHAIR ISRAEL: Thank you.

7           CHAIR BRACKPOOL: Thank you. Then do I have a motion  
8 from this Board to put it out for comment?

9           COMMISSIONER DEREK: Motion.

10          CHAIR BRACKPOOL: Motion by Commissioner Derek.

11          COMMISSIONER HARRIS: Second.

12          CHAIR BRACKPOOL: Second by Commissioner Harris. All  
13 in favor?

14          ALL MEMBERS: Aye.

15          CHAIR BRACKPOOL: Anybody opposed? The motion  
16 carries to go out for comment. That's all this is doing, is  
17 going out for comment.

18          COMMISSIONER HARRIS: And clearly, when -- when it  
19 comes back we -- if we don't feel that we've gotten sufficient  
20 comments or there's unanswered questions we can -- we can put  
21 it out for comment some more.

22          CHAIR BRACKPOOL: I would be very surprised if this  
23 comes back and we don't feel we got sufficient comment.

24          COMMISSIONER HARRIS: It took us about five years to  
25 ever get the toe grabs implemented.

1 CHAIR BRACKPOOL: Okay. Moving on. Item number  
2 four, discussion and action by the Board regarding the proposed  
3 addition of CHRB Rule 1844.1, suspension of authorized  
4 medication, to allow the Board to spend the authorization for  
5 any authorized medication after notification at a properly  
6 noticed public hearing.

7 That sounds like mumble-jumble to me. Can you  
8 explain what we're trying to do, Rick?

9 DR. ARTHUR: Certainly. Even though we --

10 CHAIR BRACKPOOL: Name for the record one more time.

11 DR. ARTHUR: Dr. Arthur, Equine Medical Director. I  
12 want to make clear that even though this came as an issue, in  
13 the quarter industry neither Los Alamitos, the American Quarter  
14 Horse Racing Association or Pacific Coast Quarter Horse Racing  
15 Association is -- have asked for a ban on Clenbuterol.

16 What -- what this issue really does is it allows the  
17 Board to suspend the authorization for a period not to exceed  
18 12 months for the use of any of the medications that are  
19 authorized under our regulations. All our regulations prohibit  
20 any medication within 48 hours. And the only medications that  
21 are allowed are those that are specifically authorized. This  
22 gives the Board the ability to do this by race, by meet, by  
23 breed for a period of time not to exceed 12 years -- 12 months.

24 The purpose -- the purpose for this really is the  
25 issue with Clenbuterol in quarter horse racing. Dr. Stanley

1 can address some of the problems we've had with this. There is  
2 an interest or preliminary discussions in the quarter horse  
3 industry about the problems with Clenbuterol, primarily  
4 Clenbuterol we believe smuggled in from Mexico is being  
5 administered for horses not for the small airway disease which  
6 is the purpose that this Board authorized this medication, but  
7 for the adrenergic effect that is the -- the muscle building  
8 effect of this drug.

9           What this would allow the Board to do is to  
10 essentially prohibit the use of Clenbuterol in quarter horses  
11 in California. There is an effort by the AQHA, American  
12 Quarter Horse Racing Association [sic] to have New Mexico,  
13 Oklahoma, Texas and Louisiana all do this simultaneously to  
14 address this problem. And it is an issue. We have confiscated  
15 compounded illicit non-FDA approved Clenbuterol at our race  
16 tracks. And Dr. Stanley, if you want him to, can explain what  
17 he has found in testing samples that have been attained from  
18 other jurisdictions at the MANDI (phonetic) Laboratory. It's  
19 that simple. And --

20           CHAIR BRACKPOOL: And that would be a useful short --  
21 short presentation on that. I'm just trying to move this  
22 meeting along.

23           DR. STANLEY: Yes. Scott Stanley, UC Davis. We've  
24 done quite a bit of work on this over the last year-and-a-half  
25 to two. There's been a disproportionate number of violations

1 for Clenbuteral associated with quarter horse racing. We've  
2 been contacted by other jurisdictions. I've been sent  
3 confiscated materials, as well as materials obtained from  
4 different horsemen for testing for a variety of different  
5 things. They all have turned out to be Clenbuterol in  
6 different forms, liquid forms, paste forms, and powdered forms.  
7 Very few of them are similar at all to the commercially  
8 available and FDA approved product Ventipulmin. They have more  
9 potency, they're at a much higher concentration, and they're  
10 being misused in -- in these horses by giving very high doses  
11 and then being used as a body building agent instead of the  
12 bronchodilator or treatment of airway disease --

13 VICE CHAIR ISRAEL: So --

14 DR. STANLEY: -- that they were intended for.

15 VICE CHAIR ISRAEL: So Clenbuterol has the same  
16 effect as a steroid?

17 DR. STANLEY: Clenbuterol has a different effect but  
18 the same end result. It can --

19 VICE CHAIR ISRAEL: Same end result.

20 DR. STANLEY: It can --

21 VICE CHAIR ISRAEL: Okay.

22 DR. STANLEY: It can build muscle mass.

23 VICE CHAIR ISRAEL: Is there any reason why  
24 Clenbuterol should be legal at all? Is there no substitute for  
25 Clenbuterol for its legitimate use?

1 DR. STANLEY: In the form that it is right now it is  
2 the only FDA available approved product that will treat the  
3 airway disease that it was intended to treat, but at small  
4 doses it's appropriately used for that. At high doses it has a  
5 different effect. The problem that we have is we believe from  
6 some of the science that the high doses can be maintained.  
7 With a lower dose after a period of time you can sustain the  
8 muscle building.

9 CHAIR BRACKPOOL: Let me ask you a question on this.  
10 I happen to have in front of me a letter that was delivered to  
11 the Board yesterday from the Pacific Coast Quarter Horse Racing  
12 Association where they -- they talk about the issue, about how  
13 troubling it is to them, and they state that the PCQHRA  
14 strongly supports the addition of this rule, which is obviously  
15 a very helpful thing.

16 And I think in the instance you're talking about  
17 it's -- it's -- it -- it certainly sounds like a useful thing.  
18 The examples you have given in the Board package here are all  
19 to do with this one issue. But are we casting the net far and  
20 wide here by granting ourselves effectively emergency powers  
21 that go beyond this particular issue at Los Al with the  
22 Clenbuterol?

23 DR. ARTHUR: Well, there -- there are two other drugs  
24 that we authorize that -- that could be considered. One is  
25 Stanozolol which is the only permitted non-indigenous anabolic

1 steroid, which has already been banned in other states. It  
2 would -- even though it hasn't been a problem here. And the  
3 other one is the other beta-2 agonist that we authorize, and  
4 that's albuterol. Any beta-2 agonist would have the same  
5 effect. And both albuterol and Clenbuterol are authorized  
6 medications.

7 Remember that this was authorized, Clenbuterol was  
8 authorized at a time when really it was for use in small airway  
9 disease. And we did out-of-competition testing at Los Alamitos  
10 on their champions and \$2 million futurity. Ever horse we  
11 tested, every horse had Clenbuterol.

12 VICE CHAIR ISRAEL: How widespread is that disease?

13 DR. ARTHUR: Small airway disease, the estimates in  
14 thoroughbreds is about 30 percent at any one time.

15 VICE CHAIR ISRAEL: And how -- and you -- do you have  
16 any available documentation on quarter horses?

17 DR. ARTHUR: Don't know about quarter horses. But my  
18 discussions with quarter horse veterinarians is much less.  
19 They obviously don't have to breathe as much to run a quarter  
20 of a mile.

21 CHAIR BRACKPOOL: They're using it for other things.

22 VICE CHAIR ISRAEL: So they use -- yeah. So  
23 obviously they're using it as -- as --

24 COMMISSIONER DEREK: Muscle. Yeah.

25 VICE CHAIR ISRAEL: -- as a steroid basically.

1           COMMISSIONER HARRIS: Don't we have here, though, an  
2 instance where both the horsemen and the track are getting  
3 together and they're saying we want to suspend the use of this  
4 medication. And we --

5           CHAIR BRACKPOOL: Correct. And I think what was --  
6 you raised an important point. What this rule change is --  
7 this is an example --

8           COMMISSIONER HARRIS: Yeah.

9           CHAIR BRACKPOOL: -- we're talking about. The rule  
10 change, that was what I was trying to clarify, would be -- and  
11 this is again a 45-day comment period is all.

12          MS. WAGNER: Correct.

13          CHAIR BRACKPOOL: But the -- but the rule we're  
14 putting out for comment is this Board after a properly noticed  
15 public hearing could temporarily suspend for up to 12 months  
16 any particular -- but we would have to hold the hearing, listen  
17 to the testimony and take a vote.

18          COMMISSIONER HARRIS: I'm not clear if we could do  
19 that, I mean, or we say we can do that if upon the  
20 recommendation of the horsemen and the track or we can just do  
21 it.

22          CHAIR BRACKPOOL: No, we're not. We're saying this  
23 Board can do it --

24          COMMISSIONER HARRIS: We would just do it. Yeah.

25          CHAIR BRACKPOOL: -- based on whatever the Board

1 decided based on the testimony that was given to it.

2 COMMISSIONER HARRIS: Uh-huh.

3 CHAIR BRACKPOOL: But -- but we would have to have  
4 that testimony at the time. So we're just allowing ourselves  
5 that additional tool to be able to -- to use to stop any of  
6 this.

7 DR. ARTHUR: There -- there is a regulation, 1406, I  
8 believe it is, that allows the Board to suspend a regulation.  
9 But there's some question whether you could suspend a  
10 regulation for a specific breed at --

11 CHAIR BRACKPOOL: Right.

12 DR. ARTHUR: -- a specific track.

13 CHAIR BRACKPOOL: Right.

14 DR. ARTHUR: And so this effectively --

15 CHAIR BRACKPOOL: Well, before we go any further --

16 DR. ARTHUR: -- cleans that up.

17 CHAIR BRACKPOOL: -- I have a couple of public  
18 speakers. So just stay where you are and we'll -- we'll do  
19 that.

20 Alan Balch, CTT.

21 MR. BALCH: Alan Balch, CTT. Chairman --

22 CHAIR BRACKPOOL: CTT, you've got a whole team here  
23 today.

24 EXECUTIVE DIRECTOR BREED: Yeah.

25 MR. BALCH: Chairman Brackpool, thank you. You --

1 you have already raised the number one question, and it's been  
2 discussed, which is just to call your attention to how broad  
3 this is, any drug substance or medication. And really we just  
4 have a question, and we understanding the 45 day period, what  
5 would the process be after the -- you hold a hearing and you  
6 hear the testimony and so forth, you could do it the day after  
7 tomorrow or whatever you decided, I assume? I just want to  
8 make it clear because it is -- it -- it may -- may need to be  
9 this broad because you want to stop misbehavior.

10 CHAIR BRACKPOOL: I think that's really --

11 MR. BALCH: But as --

12 CHAIR BRACKPOOL: That's really the problem with  
13 this, Alan, is that if -- if this is used properly, this rule,  
14 to stop somebody misbehaving you wouldn't want a grace period  
15 built into it. You would want to be able to take an emergency  
16 action, and I think that's what this is doing. It's just  
17 giving the -- the Board the necessary tool, which I would trust  
18 this Board would use appropriately, if and when something is  
19 being abused.

20 MR. BALCH: So potentially in the comment period  
21 maybe that could be fleshed out to make it absolutely clear how  
22 it works.

23 CHAIR BRACKPOOL: Right.

24 MR. BALCH: Thank you.

25 CHAIR BRACKPOOL: Right. Thank you. I have one more

1 speaker on this, Pablo Suarez, TOC.

2 MR. SUAREZ: Pablo Suarez, TOC. We feel the same  
3 way. I mean, we know the intentions of Dr. Arthur are true on  
4 this. You know, for one issue, the Clenbuterol and -- and the  
5 quarter horses. But as -- as you just saw, and you brought it  
6 up, Commissioner Brackpool, this could be something that could  
7 spiral out. I mean, Dr. Arthur just by sitting here in these  
8 last five minutes mentioned two other drugs already that, you  
9 know, might take effect under this. So we just -- we worry  
10 that it might be too broad, and that's a concern.

11 CHAIR BRACKPOOL: Okay. Well, I would certainly  
12 be -- thank you for that, Pablo.

13 I would certainly be prepared to put this out for --  
14 make a motion to put this out for -- for comment because I  
15 think it's a necessary tool that this Board needs. I would  
16 welcome any input that anybody has as to how we could  
17 potentially restrict that a little bit and yet not use -- not  
18 lose the weapon that is -- that is -- that is necessary here to  
19 stop any of this abuse.

20 Do I have a second for the motion?

21 COMMISSIONER CHOPER: Second.

22 CHAIR BRACKPOOL: Commissioner Choper seconds the  
23 motion. All in favor?

24 ALL MEMBERS: Aye.

25 CHAIR BRACKPOOL: Anybody opposed? The motion

1 carries. Thank you.

2 DR. ARTHUR: Thank you.

3 COMMISSIONER HARRIS: On that issue, it appears to me  
4 that part of the problem is that -- is this elicit Clenbuterol  
5 out there that's not really the manufactured patented item,  
6 that somebody's bringing in something that's kind of a copycat  
7 deal. But is -- does some other government agency oversee  
8 that, that you can't just be bringing in unauthorized  
9 medications?

10 DR. ARTHUR: I actually, when I was in Baltimore for  
11 the AAEP, I visited with the FDA on this issue. And the bottom  
12 line is they have bigger fish to fry. And if we presented them  
13 the right case at the right time I think they would have  
14 interest in it, you know, if there is some issues with  
15 Clenbuterol having changed cardiac collagen levels and possibly  
16 be associated with sudden deaths and -- and those sorts of  
17 issues.

18 We have had horses with Clenbuterol that are clearly  
19 not from FDA approved Ventipulmin, they've been at such high  
20 levels. And we have confiscated the material from individuals  
21 in different locations. So it is a problem, it's a major  
22 problem.

23 And if you talk to doctor -- Commissioner Israel  
24 asked about the cost. If you consider there's 1,000 horses  
25 at -- quarter horses at Los Alamitos right now at \$10.00 a day,

1 in 365 days a year that's \$3.65 million in Clenbuterol. And  
2 you can take the same thing with thoroughbred horse racing,  
3 even though I will say that I've considered it one of the best  
4 drugs introduced into veterinary medicine. But I've had more  
5 trainers in thoroughbreds say we should ban Clenbuterol than  
6 any drug. But that's -- that's not where we're going.

7 CHAIR BRACKPOOL: Thank you. Let's move it along.

8 COMMISSIONER HARRIS: Yeah. Well, our track team  
9 can't be on Clenbuterol April 17th.

10 CHAIR BRACKPOOL: Thank you. We'll have to make that  
11 an executive order because the rule won't be in place by then.

12 COMMISSIONER HARRIS: It holds some water for us.

13 EXECUTIVE DIRECTOR BREED: Right.

14 CHAIR BRACKPOOL: Exactly. Item number five; this is  
15 the result of a lot of good comment and a lot of good input.  
16 This is discussion and action by the Board regarding the  
17 proposed addition of CHRB Rule 1500.1, random drug testing, to  
18 allow random drug testing of jockeys and apprentice jockeys  
19 under specified conditions in the proposed amendment of CHRB  
20 Rule 1498, physical examination, to require drug screening  
21 during the annual jockey physicals. This again is the third  
22 issue of the day where this is a proposed rule that will go out  
23 for comment. But this is a rule that we have worked through  
24 closely with the Jockeys' Guild and the Teamsters.

25 I do have a letter that I should just read for the

1 benefit of the -- summarize for the benefit of the audience,  
2 representing the Jockeys -- Jockeys' Guild, saying that the  
3 Jockeys' Guild is now in a position to remove any objection to  
4 the adoption of this rule provided one issue is clarified, and  
5 that is they don't believe the jockeys should be responsible  
6 for paying for their own drug testing.

7 MS. WAGNER: And under this --

8 CHAIR BRACKPOOL: And --

9 MS. WAGNER: -- proposal --

10 CHAIR BRACKPOOL: Jackie?

11 MS. WAGNER: -- they are not. The jockeys are not  
12 responsible for paying for the drug testing. The only time a  
13 cost would come into play is on a split sample request.

14 CHAIR BRACKPOOL: Is on a split sample request?

15 MS. WAGNER: Uh-huh.

16 CHAIR BRACKPOOL: And so as long as that issue is  
17 clarified --

18 MS. WAGNER: Yes.

19 CHAIR BRACKPOOL: -- I would take that the Jockeys'  
20 Guild -- and I know we have a speaker from the Jockeys'  
21 Guild -- but that -- that it's -- that it's --

22 COMMISSIONER HARRIS: If that were a deal breaker I  
23 could see paying for the split sample too. I mean, it --

24 CHAIR BRACKPOOL: Well, they've already offered it --

25 COMMISSIONER HARRIS: Yeah.

1 CHAIR BRACKPOOL: -- so don't give it back to them.

2 COMMISSIONER HARRIS: Okay.

3 CHAIR BRACKPOOL: Okay. Right.

4 VICE CHAIR ISRAEL: We're going to pay for it by  
5 raising taxes on cattle, John. How do you like it now?

6 CHAIR BRACKPOOL: We'll -- we'll -- we'll do that.  
7 This is an issue that we have spent a lot of time on --

8 COMMISSIONER DEREK: Yes.

9 CHAIR BRACKPOOL: -- in this -- in this room. So I  
10 would like to move this -- I'd like to -- to move this on.

11 I do have a speaker, Shane Gusman from Broad and  
12 Gusman on behalf of the Jockeys' Guild.

13 MR. GUSMAN: Good morning. Shane Gusman on behalf of  
14 the Jockeys' Guild. And I just would like to thank your staff  
15 for working with us and -- and working through some of these  
16 issues. There were a lot of difficult issues that we had to  
17 address and -- and they got addressed to our satisfaction. And  
18 thank you for the clarification on who pays for the cost of the  
19 random testing. It was an issue for us and I'm glad it got  
20 resolved. Thank you.

21 CHAIR BRACKPOOL: Thank you very much. Do I -- I  
22 have no other speakers on the issue. Do I have any comments  
23 from any Commissioners or, in the alternative, someone prepared  
24 to make a motion to send this out for the -- for the ruling?

25 COMMISSIONER HARRIS: I'll --

1 CHAIR BRACKPOOL: Mr. Harris?

2 COMMISSIONER HARRIS: I'll move. I was one of the  
3 ones that started this initially moving down the track about  
4 four or five years ago, it seems like.

5 CHAIR BRACKPOOL: Right.

6 COMMISSIONER HARRIS: And so this is just going out  
7 for comment. But I think it's -- it should be -- I mean, in  
8 respect -- this is really for jockey safety. This is not any  
9 bad reflection on jockeys at all. It's just -- it's --  
10 basically what we have here is probably a scaled down version  
11 of what every truck driver in the U.S. does. So it -- it's  
12 just -- all kinds of professions do very similar things, and it  
13 just brings more professionalism to the --

14 VICE CHAIR ISRAEL: I'll second it.

15 COMMISSIONER HARRIS: -- sport.

16 CHAIR BRACKPOOL: And I think that I would just say  
17 that this is being sent out, as I say, with now the agreement  
18 of the Jockeys' Guild. So I thank staff and the Jockeys' Guild  
19 for their work on it.

20 Commissioner Israel seconds Commissioner Harris's  
21 motion. All in favor?

22 ALL MEMBERS: Aye.

23 CHAIR BRACKPOOL: Anybody opposed? The motion  
24 carries.

25 Moving onto item number six, discussion and action by

1 the Board regarding the proposed amendment of CHRB Rule 1433,  
2 application for license to conduct a horse race meeting, to  
3 revise the form CHRB 17, application for license to conduct a  
4 horse race meeting, and the form CHRB 18, application for  
5 license to conduct a horse race meeting of a California fair.

6 MS. WAGNER: Jackie Wagner, CHRB staff. The proposal  
7 before you is -- contains the revisions that staff is proposing  
8 to make to our current applications. There are a number of  
9 them, and I will just go really quickly.

10 Under Section 4(c) we are going to be requiring the  
11 owner to disclose whether or not they are a subsidiary and  
12 whether or not the parent company guarantees the obligation of  
13 the licensee. That will be added. We are adding language to  
14 the purse program section, which is Section 5, and that's just  
15 being amended to clarify to ensure that the applicant  
16 associations are providing the purse information from the same  
17 source.

18 We're asking additional information as it pertains to  
19 the proposed ADW providers. Your application in the packet  
20 indicates on Subsection 15 that we are going to be proposing  
21 information that will include promotional plans in conjunction  
22 with CMC based on information that was received subsequent to  
23 this packet. That -- that will be deleted from the  
24 application.

25 We're going to be adding information to ask

1 additional information as it pertains to track safety.  
2 Specifically, we are going to be requiring the applicant to  
3 provide information concerning the type of track surface at the  
4 facility, including the tracks compensation.

5           So we -- we just ask that the Board instruct us to  
6 initiate the 45-day comment period on this proposal and we will  
7 go forward with it.

8           VICE CHAIR ISRAEL: Are we going to have --

9           COMMISSIONER ROSENBERG: I have a couple of  
10 questions.

11          VICE CHAIR ISRAEL: -- any opposition to this at all?

12          COMMISSIONER ROSENBERG: I have a couple of  
13 questions --

14          MS. WAGNER: Uh-huh.

15          COMMISSIONER ROSENBERG: -- technical questions. On  
16 4(c), paragraph 4(c) --

17          MS. WAGNER: Uh-huh.

18          COMMISSIONER ROSENBERG: -- of the form --

19          MS. WAGNER: Uh-huh.

20          VICE CHAIR ISRAEL: I asked a questions and didn't  
21 get an answer.

22          COMMISSIONER ROSENBERG: -- number nine --

23          MS. WAGNER: Yes.

24          COMMISSIONER ROSENBERG: It says if -- "If more than  
25 50 percent of the share are held by a parent corporation or

1 paired with any other corporation give the name of the parent  
2 or -- or parent corporations. Is parent and/or parent  
3 corporation a publicly traded company?"

4 Well, wouldn't that -- would -- would it matter if  
5 it's a publicly traded company or privately? If -- in other  
6 words, if the parent is privately held wouldn't you still want  
7 the guarantee?

8 MS. WAGNER: I would think that we would.

9 COMMISSIONER ROSENBERG: I think this language  
10 might -- it's sort of -- it should also say private --

11 MS. WAGNER: Okay. Absolutely. And we will make  
12 that --

13 COMMISSIONER ROSENBERG: -- I think. Check that out.

14 And the other thing is we need a CPA for this, but at  
15 Paragraph 10 the whole -- this is one of the key purposes in  
16 revising the form, the profit and loss statement was intended  
17 to be broad enough to give the -- in order to evaluate the  
18 licensees performance in the past and to have a pro forma for  
19 the future --

20 MS. WAGNER: Right.

21 COMMISSIONER ROSENBERG: -- which I don't think this  
22 is broad enough language. And I talked to your auditor, the  
23 CHRB auditor before the meeting who happened to be here. And I  
24 think we need to expand that language to make it clear that  
25 will show specifically how much we spent in the prior meeting

1 on specific things like marketing or whatever, and going  
2 forward what they're basing their pro forma on.

3 MS. WAGNER: So you would like to see the language  
4 expanded a little bit --

5 COMMISSIONER ROSENBERG: Yeah.

6 MS. WAGNER: -- Commissioner? Okay. I will -- I  
7 will work with our -- our auditor. Because we did work with  
8 him in -- in adding statement of cash flow. But if we need  
9 some additional language to capture what you are looking for we  
10 will go ahead and add that.

11 CHAIR BRACKPOOL: If you add that at this stage --

12 VICE CHAIR ISRAEL: They did.

13 CHAIR BRACKPOOL: No. No. No. Because this is not  
14 a rule change.

15 MS. WAGNER: No. We can --

16 CHAIR BRACKPOOL: So --

17 MS. WAGNER: We can add --

18 CHAIR BRACKPOOL: -- just tell me the process of what  
19 happens now?

20 MS. WAGNER: The process will be once we go back and  
21 add the language to Subsection 10 then we will prepare the  
22 document for a 45-day comment period.

23 CHAIR BRACKPOOL: Oh, we still need the -- even on  
24 our own license application?

25 MS. WAGNER: Yes, we do. We --

1 CHAIR BRACKPOOL: Can you get this done for the --

2 COMMISSIONER ROSENBERG: Can't we put it out now with  
3 the 45-day comment period and you make the changes anyway  
4 without having been requested to do that?

5 CHAIR BRACKPOOL: We don't have it on a rule -- on an  
6 agenda --

7 MS. WAGNER: Yeah. You know, it --

8 CHAIR BRACKPOOL: -- for a rule change.

9 COMMISSIONER ROSENBERG: On the agenda. Okay.

10 MS. WAGNER: And it -- and it -- and it would  
11 expediate the process. We would --

12 CHAIR BRACKPOOL: Right.

13 MS. WAGNER: -- need to get the language first.

14 CHAIR BRACKPOOL: But I think we can get this done  
15 for the March meeting, don't you?

16 COMMISSIONER ROSENBERG: Yeah.

17 COMMISSIONER HARRIS: Yeah. I think --

18 MS. WAGNER: It will be noticed. It will be noticed.  
19 It probably won't come before the Board for adoption.

20 CHAIR BRACKPOOL: No, but for the 45 day --

21 MS. WAGNER: Oh, yeah.

22 CHAIR BRACKPOOL: Yeah.

23 MS. WAGNER: Yeah.

24 COMMISSIONER HARRIS: On -- on the application  
25 itself, some of it I think needs to be updated. What we really

1 want -- we're trying to figure out is an applicant capable  
2 financially of putting on a race meet.

3 CHAIR BRACKPOOL: Correct.

4 COMMISSIONER HARRIS: And the way we ask the  
5 questions doesn't quite make sense. They go into do we waive  
6 it if you've been in business since 2001 or this and that, that  
7 I think it just needs to -- to be a little bit more  
8 straightforward as all these exceptions to the thing on -- on  
9 page 65.

10 MS. WAGNER: 65? What section, Commissioner?

11 COMMISSIONER HARRIS: Well, I was looking at -- well,  
12 one, and you go on down to, to be licensed to operate a meet  
13 prior to January 1, 2001. And actually, there's been so much  
14 shuffling in the --

15 CHAIR BRACKPOOL: Right.

16 COMMISSIONER HARRIS: -- business --

17 CHAIR BRACKPOOL: Corporate structuring.

18 COMMISSIONER HARRIS: -- I don't think anybody was.  
19 So, I mean, and part of the surety bond, I don't know if  
20 there's anything sacred about \$100,000 surety bond. I think  
21 that surety bond needs to be relevant to something, I mean,  
22 relevant to how much money you're -- you're holding for your  
23 purse accounts or -- or whatever. It's not --

24 MS. WAGNER: If I --

25 COMMISSIONER HARRIS: It might --

1 MS. WAGNER: If I may clarify, on -- on subsection --  
2 on page 65, what you're speaking of, under 1(e), the reason why  
3 that question was there, "Was the association licensed to  
4 operate a race meeting prior to January 1," the \$100,000 surety  
5 bond, that's I reference to -- that is the law. The law right  
6 now, pursuant to B and P Code 19464, the little section that's  
7 all underlined makes reference to that January 1, 2001 date.  
8 And by law if you answer -- depending on how you answer you are  
9 required to give us \$100,000 bond.

10 COMMISSIONER HARRIS: Yeah. Well, I'm not clear who  
11 that bond would benefit in the event of, you know, a  
12 financial --

13 CHAIR BRACKPOOL: Right. Because the new legislation  
14 that was passed pursuant to the MEC bankruptcy now protects  
15 the -- the funds of, you know, the betters --

16 COMMISSIONER HARRIS: Yeah.

17 CHAIR BRACKPOOL: -- directly anyway. There's no way  
18 we can ever get a surety bond sufficient enough to protect  
19 anyone against -- from the -- I mean, to protect the creditors  
20 of an entity. So, you know, it's protecting us to the tune of  
21 \$100,000, but that would be argued in a bankruptcy hearing  
22 anyway.

23 MS. WAGNER: Right. Because --

24 COMMISSIONER HARRIS: Yeah. So I guess it's  
25 protecting our license fees, which we really don't --

1 CHAIR BRACKPOOL: It theoretically --

2 COMMISSIONER HARRIS: -- have anymore.

3 CHAIR BRACKPOOL: -- is protecting our license fees.

4 And we're a government entity so we would have administrative

5 priority in a bankruptcy anyway. So it's just -- I don't know

6 who else we're trying to protect.

7 COMMISSIONER HARRIS: That's why I don't --

8 CHAIR BRACKPOOL: That's the problem.

9 COMMISSIONER HARRIS: -- quite understand, who are

10 the beneficiaries?

11 CHAIR BRACKPOOL: I don't think there is really. I

12 mean, it's us, the \$100,000.

13 MS. WAGNER: Right.

14 CHAIR BRACKPOOL: But even if we didn't have it we'd

15 be first priority as a government entity --

16 COMMISSIONER HARRIS: Okay. That's -- well --

17 CHAIR BRACKPOOL: -- in a bankruptcy.

18 COMMISSIONER HARRIS: Well, a few other things. We

19 talk about under security controls, detention barns.

20 MS. WAGNER: And you're on which --

21 COMMISSIONER HARRIS: This would be on --

22 MS. WAGNER: -- section?

23 COMMISSIONER HARRIS: -- page 6 --

24 MS. WAGNER: Oh, yeah, I've got it, 6 --

25 COMMISSIONER HARRIS: -- page 14 or --

1 MS. WAGNER: I got it.

2 COMMISSIONER HARRIS: Yeah. Where --

3 MS. WAGNER: Subsection 12? Uh-huh.

4 COMMISSIONER HARRIS: Section 12.

5 MS. WAGNER: Uh-huh.

6 COMMISSIONER HARRIS: Really, we have detention  
7 stalls. We really don't have detention barns.

8 MS. WAGNER: Okay.

9 COMMISSIONER HARRIS: I guess we could have detention  
10 barns. But basically the system we're using is detention  
11 stalls, so that -- that change.

12 MS. WAGNER: That -- that would need to be changed to  
13 detention stalls, is that what you're --

14 CHAIR BRACKPOOL: Yeah.

15 MS. WAGNER: -- recommending?

16 COMMISSIONER HARRIS: Yeah.

17 MS. WAGNER: Okay.

18 CHAIR BRACKPOOL: Well, stalls or barns.

19 MS. WAGNER: Stalls or bonds *[sic]* -- or barns.

20 COMMISSIONER HARRIS: And -- and then the other issue  
21 on emergency services, there's been some concern on the  
22 qualifications of the emergency medical personnel that -- that  
23 we -- what's our expectations of -- of the type of -- of  
24 qualifications the ambulance personnel have, and we don't  
25 really get into that. I think there needs to be something of

1 what -- what -- what -- what we really have here.

2 CHAIR BRACKPOOL: That is something that we're going  
3 to discuss at the next --

4 MS. WAGNER: Yeah. We had talked about that.

5 COMMISSIONER DEREK: -- Medication and Safety  
6 meeting.

7 COMMISSIONER HARRIS: Oh.

8 MS. WAGNER: But in -- in terms of the -- in terms of  
9 the application, we need to devise the -- the -- the question  
10 that you would -- the Board would like to see as -- would  
11 address this application as --

12 COMMISSIONER HARRIS: Well, I'd like to see -- say,  
13 for instance, you've got a name and emergency phone number and  
14 licensed physician on duty during a race meeting, well, I think  
15 maybe the application should have a little bit of what -- what  
16 are the qualifications of this person or something more than  
17 just a phone number.

18 CHAIR BRACKPOOL: Well, it's a subjective  
19 determination we make at the end as to whether we're granting  
20 somebody one of these licenses. And surely, how they complete  
21 that information forms part of that decision, does it not?

22 COMMISSIONER ROSENBERG: Well, there aren't that many  
23 new people coming to try to run meetings, are there --

24 COMMISSIONER HARRIS: No. It just --

25 COMMISSIONER ROSENBERG: -- to run meetings?

1           COMMISSIONER HARRIS: I don't think -- we aren't  
2 trying to force any extra cost on somebody. It just needs to  
3 be thought out. I mean, one of the things that has come out,  
4 apparently, is the emergency medical personnel. I always  
5 assume that everybody in the -- in the ambulance was, you know,  
6 certified to be --

7           MS. WAGNER: Right.

8           COMMISSIONER HARRIS: -- an ambulance person, or  
9 whatever that is called, but apparently they're not. I mean,  
10 you can just be a person, I think, that drives the ambulance.

11          EXECUTIVE DIRECTOR BREED: Well, there's technicians  
12 and --

13          COMMISSIONER HARRIS: Yes, technicians. All these  
14 different --

15          CHAIR BRACKPOOL: They're different, different  
16 things.

17          EXECUTIVE DIRECTOR BREED: Different levels.

18          VICE CHAIR ISRAEL: Well, there's different --  
19 there's EMTs.

20          CHAIR BRACKPOOL: Well, let's just try and get the  
21 words -- just list the qualifications so that we can make the  
22 determination.

23          VICE CHAIR ISRAEL: Just check it out.

24          CHAIR BRACKPOOL: All right. I think there may be a  
25 couple other things like this. We can -- maybe if any other

1 commissioners have them we can email them to staff in the next  
2 two weeks so that we don't have to take the audiences time with  
3 walking through the line by line of the --

4 MS. WAGNER: Okay. I will be --

5 CHAIR BRACKPOOL: -- item.

6 MS. WAGNER: I will be in contact with -- with the  
7 Commissioners --

8 CHAIR BRACKPOOL: Thank you.

9 MS. WAGNER: -- to find out if there --

10 CHAIR BRACKPOOL: We don't need an action --

11 MS. WAGNER: -- are any additional.

12 CHAIR BRACKPOOL: -- on this item today?

13 MS. WAGNER: No. No then.

14 CHAIR BRACKPOOL: Okay. Moving on, item number  
15 seven. Item number seven is -- and we had this on the agenda  
16 in July of 2002. A little background. This is the -- this is  
17 the claiming option entry that allows people to bring back a  
18 horse that has presumably been injured that hasn't run in 180  
19 days or more, running at the same level it ran at the previous  
20 time and be protected from the claim. Everybody thinks this is  
21 a particularly good rule and encourages owners to -- to stay  
22 in -- stay with the horse for a longer period of time.

23 But I discussions with the various racing secretaries  
24 the rule is not being used that much. And so we had a  
25 discussion in July of is there an amendment we can make to this

1 rule, is it you come back one level lower, is it you stay for  
2 two levels, is it at two levels but one -- the second one has  
3 to be one level higher? I -- that was where we got to.

4           The -- the TOC stated at the July meeting that they  
5 which to study the -- the effects of this. They pledged to  
6 work with the CTT and the racing secretaries. And I'm bringing  
7 it back because we haven't heard anything and this is something  
8 we should hear.

9           So I'm going to ask the TOC to tell me where they are  
10 on the issue, then the CTT, and then I have a public speaker.

11           No, Tom, wait a second until we're done with the --

12           MR. ROBBINS: I only came up because Guy invited me  
13 up, so --

14           MR. LAMOTHE: Yeah.

15           CHAIR BRACKPOOL: Oh.

16           MR. LAMOTHE: Good morning, Chairman. Guy Lamothe,  
17 Thoroughbred Owners of California. You're correct. You asked  
18 us to look into this. So what we did is we convened the racing  
19 secretaries last summer. And Tom Robbins and his crew pulled  
20 some data. And the data, I believe they've submitted to the  
21 Board and found some interesting observations, and concluded  
22 that the rule was working. In an 18-month period that they  
23 observed there were 145 runners that took advantage of the  
24 rule. And there were -- 125 of those made at least one  
25 additional start in the state. We saw an increase in the

1 number of horses winning off the layoff. They also talked with  
2 the trainers and asked if the rule could be tweaked or done  
3 better. They've -- and the consensus was that the rule is  
4 working as is, that they would keep an eye on it. And if  
5 anything, they thought that they could probably promote the  
6 rule more than what it had been, and they apparently have been  
7 since last summer.

8 CHAIR BRACKPOOL: Well, that's not exactly what this  
9 email says. It says, "I emailed all the racing secretaries. I  
10 have not received one response that the rule should be  
11 modified." That doesn't mean they're all in agreement that it  
12 shouldn't be modified, it means nobody bothered to respond.

13 MR. LAMOTHE: Well, I'll let the racing secretary  
14 speak to that effect.

15 CHAIR BRACKPOOL: Tom Robbins.

16 MR. ROBBINS: Tom Robbins, Racing Secretary at Del  
17 Mar. As Guy noted, we've been in contact for the last several  
18 weeks with TOC and Alan Balch from CTT. And I have emailed and  
19 had discussions with all the racing secretaries in California.  
20 We are all in agreement that the -- the rule in its current  
21 form is working well for many of the reasons that -- that Guy  
22 just mentioned. So -- and we have submitted the information  
23 through the end of calendar year 2010 showing the results of --  
24 of the rule. Over 180 horses have taken advantage of the rule.  
25 And I think it's important to note --

1           CHAIR BRACKPOOL: In two years, a little over two  
2 years. So how many is that a month, two, three?

3           MR. ROBBINS: Well, you have to understand that there  
4 are only so many horses that would qualify, and those are the  
5 horses that have been off for 180 days or greater and would be  
6 making that race back, and they're coming out of a claiming  
7 race. There are many horses that are off for six months or  
8 more that aren't -- wouldn't qualify because they're not coming  
9 out of a claiming race or having made --

10          CHAIR BRACKPOOL: Yeah.

11          MR. ROBBINS: -- a start in the last race before  
12 their time on the shelf.

13          CHAIR BRACKPOOL: My only point is if I was going to  
14 look at any data in whatever life I was leading here you've got  
15 raw statistics but there's no backup there. So how many were  
16 off for that period of time? How many of them out of that  
17 number applied for that? How many of them then went on to one  
18 level higher? What did they do in their next race? I mean --

19          MR. ROBBINS: Approximately 25 percent of the horses  
20 that are eligible to use the waiver claiming rule have used it.  
21 Approximately ten percent of those horses have won in their  
22 comeback race.

23          Any modification to the rule -- and I think it needs  
24 to be noted that three years ago when we sat down with TOC and  
25 CTT, the racing secretaries, all of these groups together, we

1 tried to design a rule that would benefit the horse, number  
2 one, and number two, protect the owner of that horse making  
3 that investment while the horse is on the shelf. Number three,  
4 it was important that when that comeback horse was making it's  
5 return start that there wasn't an unfair situation for the  
6 horses competing --

7 CHAIR BRACKPOOL: No. I understand.

8 MR. ROBBINS: -- against that horse. So there was a  
9 lot of discussion on whether we should make it two races, three  
10 races.

11 CHAIR BRACKPOOL: Right.

12 MR. ROBBINS: We reached a consensus.

13 CHAIR BRACKPOOL: Let me ask you, 25 percent of them  
14 take advantage of the rule that have been injured for that  
15 long?

16 MR. ROBBINS: Correct.

17 CHAIR BRACKPOOL: What do the other 75 percent do?

18 MR. ROBBINS: They don't take advantage of the rule.

19 CHAIR BRACKPOOL: I understand that. So what races  
20 did they go into? Did they go in lower? How many levels  
21 lower? How many levels higher?

22 MR. ROBBINS: Seventy-five --

23 CHAIR BRACKPOOL: We need the data --

24 MR. ROBBINS: Seventy-five percent --

25 CHAIR BRACKPOOL: -- to be able to reach a

1 determination.

2 MR. ROBBINS: -- of those horses that could have  
3 taken advantage of the rule are going in the same level or  
4 levels higher. Why they don't take advantage of the rule,  
5 that's probably a question better asked of the trainers and the  
6 owners that are running those horses in their comeback race.  
7 The rule has been provided. We think it's been successful. I  
8 as a racing secretary have not heard, as Guy noted, from one  
9 owner or trainer that has suggested any kind of modification to  
10 the rule. I believe the owners and the trainers organizations  
11 feel the same way. For that reason we're suggesting that the  
12 rule is okay in its present form.

13 CHAIR BRACKPOOL: Commissioner Choper has a question.

14 COMMISSIONER CHOPER: Let me make maybe a bad  
15 suggestion. You know, I'm very skeptical about lots of data,  
16 just, I mean, you know, whatever you've got. But you think you  
17 could ask people who bring a horse back and put the horse back  
18 in for -- you know, into a claiming race and they don't --  
19 and -- but it can't be claimed because of the rule. You ask  
20 them, why did you do -- would you -- why -- why did you do  
21 this? Did this bring you back sooner? Or, for example, we  
22 don't have any indication of what happened. I'm not blaming  
23 anybody, we just don't have it. When you say 180 took  
24 advantage of the rule, I'd be sort of curious to know whether  
25 those 180 would not have run the horse if they couldn't have

1 taken advantage of the rule, or why is this -- it was done,  
2 right, to encourage owners and trainers to continue training a  
3 horse at some expense and then bring them back without fear  
4 that after all of the expenses they put into the training  
5 someone takes it at a cheap price; right?

6 MR. ROBBINS: That's exactly right.

7 COMMISSIONER CHOPER: All right. So is it  
8 worthwhile, possible, the next time around for the next 12  
9 months, assuming we have about, you know, 75 or 80 such horses,  
10 to ask them what they would have done otherwise?

11 MR. ROBBINS: I think that -- that would be a great  
12 poll that we could all work together, CTT, TOC and -- and try  
13 to personalize this and find out why they're not using the  
14 rule, or those that are using it, if it was a reason that they  
15 did lay a horse up --

16 COMMISSIONER CHOPER: Because you said you were --

17 MR. ROBBINS: -- and do the right thing with the  
18 animal.

19 COMMISSIONER CHOPER: -- you were going to promote  
20 it. I take it you're -- I don't know what -- exactly what you  
21 have in mind.

22 MR. ROBBINS: Well, what we find out in this industry  
23 that -- with a lot of our rules, that not everybody is aware of  
24 them.

25 COMMISSIONER CHOPER: I understand.

1 MR. ROBBINS: We've tried to do -- it's in the  
2 condition books. I'm -- I'm pretty certain that it was in the  
3 newsletters, TOC, CTT, that it was a new rule that was  
4 implemented for the benefit of the owner. It's the only rule,  
5 as far as I know, in the United States that exists, anything of  
6 this sort of thing. So it is a benefit to --

7 COMMISSIONER CHOPER: Yeah.

8 MR. ROBBINS: -- to those that raise horses --

9 COMMISSIONER CHOPER: Yeah.

10 MR. ROBBINS: -- in California.

11 COMMISSIONER CHOPER: I'd be curious, that's all.

12 CHAIR BRACKPOOL: Commissioner Harris?

13 COMMISSIONER HARRIS: Yeah. Yeah. It's -- it's a  
14 good rule. It's not -- it hasn't helped as much as -- as we  
15 were hoping because it costs so much to bring a horse back.  
16 And often times you need to come back at a lower level to be  
17 competitive, but it's probably better than nothing. But, I  
18 mean, it's going to be an ongoing problem. Because if you stop  
19 on a horse and you give it three months off and you put it back  
20 and train for another three months you're going to well have  
21 another 12,000 in the horse and if the horse is worth --

22 CHAIR BRACKPOOL: And that -- and then that was the  
23 purpose for the discussion in July and that's the purpose for  
24 today is, is there anything we could be doing that would  
25 improve it?

1 COMMISSIONER HARRIS: Yeah. I think --

2 CHAIR BRACKPOOL: And what I've got here is a very  
3 defensive response that says I called around, nobody bothered  
4 to call me back, so it must be working okay.

5 MR. ROBBINS: No. That's -- that's --

6 COMMISSIONER CHOPER: Well, no. That's not --

7 MR. ROBBINS: With all due respect, that's not what  
8 happened, Mr. Brackpool. That's not what happened.

9 CHAIR BRACKPOOL: I emailed --

10 MR. ROBBINS: I've been --

11 CHAIR BRACKPOOL: -- all of the racing secretaries  
12 and I have not received one response that the rule should be  
13 modified.

14 MR. ROBBINS: Who -- who sent that out, if I may?

15 CHAIR BRACKPOOL: You.

16 MR. ROBBINS: I'm sorry?

17 CHAIR BRACKPOOL: You.

18 MR. ROBBINS: No. I've emailed and -- and discussed  
19 with them what they have responded with, that the rule should  
20 not be modified.

21 VICE CHAIR ISRAEL: They responded but they --

22 MR. ROBBINS: I'm sorry. Maybe I didn't --

23 CHAIR BRACKPOOL: Okay.

24 MR. ROBBINS: -- make that clear.

25 CHAIR BRACKPOOL: So maybe it was your wording in the

1 email.

2 MR. ROBBINS: I apologize for that. If that's --

3 CHAIR BRACKPOOL: You have not received --

4 MR. ROBBINS: If that's your --

5 CHAIR BRACKPOOL: -- one response that the rule  
6 should be modified?

7 MR. ROBBINS: Correct.

8 CHAIR BRACKPOOL: Okay.

9 MR. ROBBINS: Sorry.

10 COMMISSIONER HARRIS: And one of the issues now,  
11 there's not that many horses being claimed anyway. So people  
12 aren't as worried about losing horses as -- as they used to be.

13 CHAIR BRACKPOOL: Well --

14 COMMISSIONER ROSENBERG: If -- if no one -- if the  
15 gentleman behind --

16 CHAIR BRACKPOOL: Commissioner Rosenberg.

17 COMMISSIONER ROSENBERG: If -- if Guy Lamothe from  
18 the TOC has no comments, I mean, we're spending a lot of time  
19 on this.

20 CHAIR BRACKPOOL: Yeah. No. There's nothing we  
21 can --

22 COMMISSIONER ROSENBERG: Yeah.

23 CHAIR BRACKPOOL: It was -- it was out. We promised  
24 to bring it back when they had studied the issue.

25 VICE CHAIR ISRAEL: Well, Tom, I missed part of your

1 presentation. The one thing I'm unclear about is you say 25  
2 percent of the owners and trainers are taking advantage of the  
3 rule. Is that 25 percent of those who start horses or 25  
4 percent of those who lay up horses?

5 MR. ROBBINS: Twenty-five percent of the horses --

6 CHAIR BRACKPOOL: That are eligible.

7 MR. ROBBINS: -- that would be eligible under the  
8 terms of this rule.

9 VICE CHAIR ISRAEL: How many of them don't ever come  
10 back to the track?

11 CHAIR BRACKPOOL: We don't know that.

12 MR. ROBBINS: We -- we don't know.

13 CHAIR BRACKPOOL: This is 25 percent --

14 MR. ROBBINS: We don't know.

15 CHAIR BRACKPOOL: -- of those that are eligible.

16 VICE CHAIR ISRAEL: Those who actually come back and  
17 run?

18 MR. ROBBINS: Right. That's correct.

19 VICE CHAIR ISRAEL: Okay. That's what I --

20 MR. ROBBINS: That -- that run at the same level in  
21 which they left --

22 CHAIR BRACKPOOL: Right.

23 MR. ROBBINS: -- or higher.

24 VICE CHAIR ISRAEL: Maybe they're trying to get  
25 claimed --

1 CHAIR BRACKPOOL: Right.

2 VICE CHAIR ISRAEL: -- just to get some money out of  
3 them --

4 CHAIR BRACKPOOL: Well, maybe.

5 VICE CHAIR ISRAEL: -- you know?

6 COMMISSIONER DEREK: Seventy-five percent?

7 CHAIR BRACKPOOL: Yeah. It seems a lot. Okay. Item  
8 number eight, discussion and action by the Board regarding a  
9 plan by the Commerce Casino Minisatellite Wagering Facility to  
10 expand its facility to include an adjacent building.

11 MR. BLONIEN: Good morning, Mr. Chairman and Members.  
12 Rod -- oh, excuse me. Jackie?

13 CHAIR BRACKPOOL: Yeah. Jackie is first. And, Rod,  
14 can you come up here for this one?

15 EXECUTIVE DIRECTOR BREED: Yeah.

16 MS. WAGNER: Jackie Wagner, CHRB staff. Just to  
17 give -- refresh the Board's memory, at its April 24th, 2009  
18 Board meeting the Board approved the application for a license  
19 to operate a minisatellite facility at the Commerce Club. The  
20 Commerce Club was actually the first minisatellite to go online  
21 for us here in California. They were approved for two years.  
22 Their current license is slated to expire at the end of March.  
23 We are expecting their renewal application to be submitted in  
24 time for the March -- next month's meeting.

25 We do have the representative from Commerce Club here

1 and in advance of receiving the application informing the Board  
2 of the club's plans to expand their minisatellite facility and  
3 ask for the Board's endorsement.

4 CHAIR BRACKPOOL: I asked you when you gave me the  
5 agenda why we needed to hear this a month in advance of hearing  
6 it. But is there something --

7 MR. BLONIEN: Yes.

8 CHAIR BRACKPOOL: -- compelling?

9 MR. BLONIEN: Yes, Mr. Chair and Members. Rod  
10 Blonien --

11 CHAIR BRACKPOOL: Okay.

12 MR. BLONIEN: -- on behalf of the Commerce Club. If  
13 you recall, I made a presentation to you in December showing  
14 how we're going to rehab this building. The bottom line is we  
15 want to be sure that we are approved before we hire the  
16 architects and begin the construction. So we're anxious to get  
17 it going. It's probably going to take us six months to get it  
18 online. We --

19 CHAIR BRACKPOOL: But we don't have an application to  
20 approve?

21 MS. WAGNER: That's correct. What the Board could do  
22 at this point is to endorse the concept that -- of the  
23 expansion, but we would not be able to approve it until we have  
24 the application.

25 VICE CHAIR ISRAEL: So I can move that we say vaya

1 con dios? Is that a legal terms that's --

2 CHAIR BRACKPOOL: Commissioner Harris has a question.

3 COMMISSIONER HARRIS: Well, I don't understand why we  
4 care anyway. I mean, if somebody wants to build a bigger one  
5 that's great. I don't see what -- what -- what the role of  
6 government is there.

7 CHAIR BRACKPOOL: Well, when you say why do we care,  
8 you understand why we would be opposed?

9 COMMISSIONER HARRIS: Well, why we even --

10 CHAIR BRACKPOOL: Because we would be supportive of  
11 anyone wishing to expand their --

12 COMMISSIONER HARRIS: Yeah.

13 CHAIR BRACKPOOL: -- minisatellite operation.

14 COMMISSIONER HARRIS: Well, why we should make it a  
15 bureaucratic thing and have to --

16 CHAIR BRACKPOOL: Right. Right.

17 COMMISSIONER HARRIS: -- spend a lot of time on it.

18 MR. BLONIEN: We -- we anticipate we'll have to come  
19 back or at least show the -- show the staff that we are in  
20 compliance with the fire regulations, etcetera. But we just  
21 wanted to be sure that we have your -- your sanction, your  
22 approval before we spend --

23 CHAIR BRACKPOOL: You're not getting our approval on  
24 it because there's nothing for us to approve. But if you want  
25 this Board to say they are generally supportive as a Board of

1 the expansion of these facilities I think --

2 COMMISSIONER CHOPER: So moved.

3 COMMISSIONER DEREK: So moved.

4 MR. BLONIEN: That our --

5 CHAIR BRACKPOOL: -- the answer is yes.

6 MR. BLONIEN: That our satellite includes this  
7 adjacent building.

8 COMMISSIONER HARRIS: It's a happy trails type deal?

9 MR. BLONIEN: Yes.

10 MS. WAGNER: And all of that --

11 COMMISSIONER CHOPER: I've got a quick question.

12 MS. WAGNER: -- will be part of the application when  
13 we --

14 VICE CHAIR ISRAEL: Who within our purview --

15 MS. WAGNER: -- when we get it next month.

16 VICE CHAIR ISRAEL: -- would actually check this?

17 MS. WAGNER: So --

18 COMMISSIONER CHOPER: Mr. Chairman, I have a quick  
19 question.

20 CHAIR BRACKPOOL: Go ahead.

21 COMMISSIONER CHOPER: No. I have -- I have -- I  
22 think it's great.

23 MR. BLONIEN: Thank you, sir.

24 COMMISSIONER CHOPER: And I think you ought to do  
25 some more of them. But I'd like to ask one question. Just do

1 you have any idea, and if not is there any way of trying to  
2 find out, the extent to which these are people making bets who  
3 wouldn't be making them otherwise?

4 MR. BLONIEN: There certainly are some people who are  
5 making bets who wouldn't be making them otherwise. There  
6 are -- there's also some erosion in terms of the adjacent  
7 satellites. And -- but there are some people -- frankly, I  
8 think we're making alternative -- who are making wagers through  
9 alternative sources who are now betting at the Commerce Club.

10 COMMISSIONER CHOPER: Uh-huh. Who -- I didn't -- you  
11 mean who are betting at the Commerce Club --

12 MR. BLONIEN: Who are betting at the Commerce Club --

13 COMMISSIONER CHOPER: -- who aren't betting at  
14 alternative sources?

15 MR. BLONIEN: -- who were previously betting on  
16 alternative sources, such as offshore and etcetera.

17 CHAIR BRACKPOOL: Uh-huh.

18 COMMISSIONER ROSENBERG: I have a question.

19 VICE CHAIR ISRAEL: But there are already occasional  
20 poker players who are now horse players.

21 MR. BLONIEN: Absolutely.

22 VICE CHAIR ISRAEL: That's what the important part  
23 is.

24 COMMISSIONER ROSENBERG: How many people do you --  
25 you cited the number -- the handle per day is between what,

1 80,000 a day average?

2 MR. BLONIEN: Yes.

3 COMMISSIONER ROSENBERG: How many people do you  
4 have -- approximately have betting on the average per day?

5 MR. BLONIEN: I will say somewhere between 150 and  
6 200 people.

7 COMMISSIONER ROSENBERG: Okay. Last question. Do  
8 you have -- do you do any cross-promotional with the tracks,  
9 some of the ontrack sites --

10 MR. BLONIEN: We --

11 COMMISSIONER ROSENBERG: -- like Santa Anita or  
12 Hollywood --

13 MR. BLONIEN: We are not doing --

14 COMMISSIONER ROSENBERG: -- or Del Mar?

15 MR. BLONIEN: We are not doing that currently.

16 COMMISSIONER ROSENBERG: Have you been approached by  
17 the tracks to do something like that?

18 MR. BLONIEN: In the beginning we were, and I think  
19 we did do some things.

20 COMMISSIONER ROSENBERG: Okay.

21 MR. BLONIEN: But I think it's been awhile, sir.

22 CHAIR BRACKPOOL: Thank you.

23 MR. BLONIEN: You're welcome.

24 CHAIR BRACKPOOL: Does that give you the comfort that  
25 you need that --

1 MR. BLONIEN: Don't we have a motion?

2 CHAIR BRACKPOOL: There isn't a motion. There's not  
3 anything in front of us.

4 MR. BLONIEN: Okay.

5 EXECUTIVE DIRECTOR BREED: You're in front of this --

6 CHAIR BRACKPOOL: But Commissioner, we're not  
7 approving anything. There's no approval required. There's  
8 nothing to approve. But Commissioner Harris has said, "Happy  
9 Trails." I think that is the sentiment of the Board. But we  
10 don't have anything in front of us to approve or deny.

11 MS. WAGNER: That's right.

12 VICE CHAIR ISRAEL: That's why I moved vaya con dios.

13 COMMISSIONER DEREK: Yes. Happy trails.

14 VICE CHAIR ISRAEL: Okay.

15 CHAIR BRACKPOOL: Thank you.

16 VICE CHAIR ISRAEL: Go with God, whoever he is or she  
17 is.

18 (Colloquy Between Board Members)

19 CHAIR BRACKPOOL: Okay. Item number nine, discussion  
20 and action by the Board regarding the allocation of the balance  
21 of the 2011 Southern California thoroughbred race dates.

22 Jackie, if you would come back up. I'm going to try  
23 and make this relatively simple here. It is my understanding  
24 that we agreed, the northern dates for the whole year.

25 MS. WAGNER: Yes. Correct.

1 CHAIR BRACKPOOL: It is my further understanding that  
2 we agreed the -- the -- well, the Los Al and -- and harness  
3 racing have been agreed.

4 MS. WAGNER: That's correct.

5 CHAIR BRACKPOOL: This Board approved -- this Board  
6 approved the race dates for thoroughbreds in Southern  
7 California through the conclusion of the Del Mar meet.

8 MS. WAGNER: That's correct.

9 CHAIR BRACKPOOL: So the first date that we have out  
10 there to approve would be the Fairplex Park date.

11 MS. WAGNER: Yes.

12 CHAIR BRACKPOOL: I do not have that calendar in my  
13 Board packet.

14 MS. WAGNER: Okay. Fairplex. I can tell you  
15 traditionally --

16 CHAIR BRACKPOOL: Well, let's not do traditionally.

17 MS. WAGNER: Yeah.

18 CHAIR BRACKPOOL: It's a mistake. We missed it in  
19 the Board packet. We talked about the others, and for some  
20 reason the Fair was left out.

21 So can I ask Fairplex to stand up and just tell us  
22 the dates. They are --

23 MR. HENWOOD: Jim Henwood. Mr. Commissioner, Members  
24 of the Board, Fairplex Park race dates are from September 8th  
25 through September 26th.

1 CHAIR BRACKPOOL: September 8th through September 26?

2 MR. HENWOOD: Yes.

3 VICE CHAIR ISRAEL: How many days?

4 MR. HENWOOD: We're looking at 15 days as our  
5 traditional calendar.

6 CHAIR BRACKPOOL: Right. And, Guy, are you going to  
7 be talking for TOC on all of this --

8 MR. LAMOTHE: Sure.

9 CHAIR BRACKPOOL: -- today? Can you just stand up  
10 one second. I just want to get the thing going because we  
11 missed that. TOC is in agreement with those dates?

12 MR. LAMOTHE: Yes, we are in agreement with dates.  
13 Guy Lamothe, TOC.

14 CHAIR BRACKPOOL: With those --

15 MR. LAMOTHE: We are in agreement.

16 CHAIR BRACKPOOL: With those Fairplex dates?

17 MR. LAMOTHE: Yes. Thank you.

18 CHAIR BRACKPOOL: Okay. So when we come at the end  
19 of this agenda item to do the motion further part of the motion  
20 will be Fairplex dates run from -- well, we're not approving  
21 their meeting --

22 MS. WAGNER: Right.

23 CHAIR BRACKPOOL: -- but just the -- the dates.

24 MS. WAGNER: The weeks.

25 CHAIR BRACKPOOL: The dates will be from September,

1 Thursday the 8th, concluding on Monday the 26th.

2 MS. WAGNER: Right. Correct.

3 CHAIR BRACKPOOL: And we'll handle the issue with  
4 them separately when they come to us with their application for  
5 that meeting, but that's the block of dates that we talked  
6 about.

7 The next set of dates or the two remaining sets of  
8 dates, I should say, would be the fall meet that historically  
9 was Oak Tree at Santa Anita; that last year was Oak Tree at  
10 Hollywood Park. This year we have two competing applications  
11 in for those, which would be Oak Tree running at Hollywood Park  
12 and Santa Anita asking to have the dates. And then we have the  
13 Hollywood Park fall dates.

14 MS. WAGNER: Right.

15 CHAIR BRACKPOOL: So just so that, again, I  
16 understand this calendar the way it's done, there does not  
17 appear to be any -- but I don't have it here -- disagreement on  
18 the Hollywood Park fall date.

19 MS. WAGNER: Correct. I have not heard any  
20 disagreement.

21 CHAIR BRACKPOOL: But I don't have them in this  
22 calendar. The highlighted dates in this calendar are all to do  
23 with the dispute between who gets the early fall dates. If I'm  
24 missing something let me know, but I'm not seeing them here.

25 MS. WAGNER: All right.

1 CHAIR BRACKPOOL: So could I ask somebody from  
2 Hollywood Park to stand up and tell me, just so that we can  
3 absolutely confirm what they are.

4 MS. THURMAN: Bernie Thurman. November 9th through  
5 December 18th --

6 MS. WAGNER: 18th.

7 MS. THURMAN: -- at Hollywood Park.

8 CHAIR BRACKPOOL: November 9th through December --

9 MS. WAGNER: 18th.

10 CHAIR BRACKPOOL: -- 18th. Right. I just don't have  
11 it in the colored --

12 MS. WAGNER: Yes.

13 CHAIR BRACKPOOL: -- copy.

14 MS. WAGNER: I see it. I got it.

15 VICE CHAIR ISRAEL: Oh.

16 CHAIR BRACKPOOL: Right. Guy, can you please confirm  
17 that the TOC is good with those dates, the Hollywood Park fall  
18 dates?

19 MR. LAMOTHE: Guy Lamothe, TOC. Yes, TOC is fine  
20 with those dates.

21 CHAIR BRACKPOOL: Okay. See I'm just trying to make  
22 this easy. Okay. Now those dates, either Fairplex or  
23 Hollywood Park fall dates, were not contested and those are the  
24 blocks. Again, we're not approving at this stage the meetings.  
25 We're just --

1 MS. WAGNER: The blocks. The weeks. The allocated  
2 weeks.

3 CHAIR BRACKPOOL: -- the weeks and the -- and the  
4 blocks.

5 So now we're down to the discussion that took I don't  
6 know how many meetings last year and we really got to get this  
7 done so that we bring some certainty to the process, which is  
8 the early fall dates. I don't think I need to spend too much  
9 time on the history of this, but when Santa Anita underwent  
10 organizational ownership change at the beginning of 2010 the  
11 new entity voided the historic lease that Oak Tree had with  
12 Santa Anita at the 23rd hour. It was offered by the new owners  
13 of Santa Anita that Oak Tree could race there for one more year  
14 at the 23rd hour and what felt like 58th minute. The TOC and  
15 CTT determined they did not wish to race that venue at Santa  
16 Anita last year because of concerns about the track. And Oak  
17 Tree found a temporary home at Hollywood Park.

18 I think the concerns that have been raised to this  
19 Board revolve around where that meeting should go now due to  
20 concerns about field size, purse money, etcetera, etcetera.

21 Today's hearing is about 2011 and it is not a  
22 precedent for 2012 or onwards. I happen to think that some of  
23 the discussions that have ongoing about 2012 onwards have been  
24 really constructive and very good, but I want to make the point  
25 crystal clear that this is still 2011 where we're still dealing

1 with these short-term problems that have to be resolved, and  
2 these are not precedent setting issues on an ongoing basis.

3           So what I'd like to do is have sort of in the  
4 following, you know, sort of in the following order. I'd like  
5 to have TOC tell us their position. I'd like to have CTT tell  
6 us their position. And then I'd like to hear from  
7 representatives of Santa Anita and then Oak Tree, because those  
8 are the two applicants from there.

9           So if there are no other concerns, I would like to  
10 start with asking TOC to stand up and give me their position,  
11 give the Board their position.

12           MR. LAMOTHE: Thank you, Mr. Chairman. Guy Lamothe,  
13 TOC. The 2010 Oak Tree meet, it moved to Hollywood Park over  
14 trainers' concerns over the safety and the quality of the  
15 racing surface here at Santa Anita. Now that that surface has  
16 been replaced that issue has been resolved. So accordingly, we  
17 would support the Oak Tree racing meet moving back to the Santa  
18 Anita Park racing facility.

19           CHAIR BRACKPOOL: Well, you would -- you would  
20 support the -- I don't think there's an offer right now for the  
21 Oak Tree meet to be held at Santa Anita. I think what is on  
22 the table is that Santa Anita meet some arrangement with Oak  
23 Tree that has to be concluded between them.

24           MR. LAMOTHE: Well --

25           CHAIR BRACKPOOL: But what you're stating is -- well,

1 tell me exactly what you're saying.

2 MR. LAMOTHE: Well, we -- we hear that there have  
3 been discussions but we're not privy to all those details.

4 CHAIR BRACKPOOL: Right.

5 MR. LAMOTHE: So we would like to understand those  
6 details and we can respond to them.

7 CHAIR BRACKPOOL: Thank you. CTT?

8 MR. BALCH: Alan Balch for CTT. Commissioners, this  
9 is a complex problem. You're asking about the allocation of  
10 racing dates to a racing facility, we understand. And our  
11 constituents by and large favor the allocation of those, let's  
12 call them early fall dates or the block of dates, the  
13 allocation of dates to the Santa Anita Park facility. We  
14 regret that we have not been involved in any conversations that  
15 have been held by TOC or others on this matter because we do  
16 agree that these are important things and we've tried to reach  
17 out to the parties, so we've had individual discussion with  
18 both Oak Tree and Santa Anita. And our -- we believe our  
19 constituents by and large do favor the dates being allocated to  
20 Santa Anita, with no disrespect at all to Oak Tree which we  
21 believe has been a tremendous force for good in the -- in the  
22 sport everywhere, not just here in California, and we have the  
23 highest regard for Oak Tree. Thank you.

24 CHAIR BRACKPOOL: Thank you. Who do we have here  
25 from Santa Anita? Is Scott Daruty here? Yeah.

1 MR. DARUTY: Hello. Scott Daruty appearing on behalf  
2 of Santa Anita Park. I'm not going to rehash all the past  
3 discussions. We've -- we've met at CHRB meetings and also  
4 separate dates meetings to talk about various issues related to  
5 the fall racing dates. So without rehashing all of that I'll  
6 just make a -- a few specific comments.

7 We -- we believe very strongly that Santa Anita Park  
8 is the proper location to run the fall race meet in 2011.  
9 Frankly, we believe it's a better racing facility than  
10 Hollywood Park. We're committed here to the long-term health  
11 of the industry, and to that end it made a significant  
12 investment in our racing surface and in trying to -- to keep  
13 this facility in top shape for racing. We believe racing fans  
14 prefer to come to this venue. I think that's evident by the  
15 difference in attendance figures at Hollywood Park versus  
16 attendance figures here. At Santa Anita, in fact, a fact we  
17 are very proud of is that our attendance is up over seven  
18 percent this year. We're averaging 7,750 people per day at  
19 this existing Santa Anita meet. We've had five days over  
20 10,000. We've had a day of 35,000, a day of 21,000. So we're  
21 getting crowds. This is a sport that requires people in the  
22 stands. Sometimes we focus too much on the wagering and the --  
23 and the simulcasting aspect of it but we still need to have  
24 fans in the seats. And we believe the fans prefer to come here  
25 at Santa Anita. So for a number of -- of reasons we think the

1 fall dates should be run here.

2           Now we also recognize that Oak Tree has a  
3 longstanding involvement within the industry and -- and is well  
4 respected by everybody in the industry including us. We  
5 acknowledge the mistakes we made in the process. We're not,  
6 you know, pleased with the way everything rolled out. I'm not  
7 going to stand here and -- and make excuses for it, but -- but  
8 suffice it to say we acknowledge we've made mistakes in the  
9 process.

10           At this point we do not have an agreement with Oak  
11 Tree. Oak Tree is under a contract, as I think we're all  
12 aware, to run its dates should it receive those dates at  
13 Hollywood Park. And the last thing we would ever want to do is  
14 interfere with that contract, so we do not have an agreement  
15 with Oak Tree. But what we do have, and -- and I'll -- it's  
16 been stated before and I'll reiterate it here today, we have  
17 made a unilateral commitment, a unilateral commitment to  
18 provide certain accommodations including a financial payment to  
19 Oak Tree to help soften the blow to them if they don't receive  
20 those dates. This offer is, obviously, conditioned upon us  
21 receiving the dates instead of them. That's well within the  
22 Board's, you know, discretion as to whether it gives us them or  
23 not.

24           But what I'm saying is without any requirement that  
25 Oak Tree do anything or give anything or say anything we're

1 unilaterally offering the financial accommodation to Oak Tree  
2 should we receive the dates from this Board.

3 CHAIR BRACKPOOL: One of the big issues with timing  
4 of what is now being described as the early fall meet are  
5 obviously things like the graded stakes races because it's  
6 crucial as we lead up to Breeder's Cup for owners who have  
7 those horses.

8 Do you feel that you would be in a position to work  
9 something out with Oak Tree that would allow for those  
10 important races to be run here?

11 MR. DARUTY: We would absolutely like to run the  
12 graded stakes races that historically have been run by Oak  
13 Tree. We would like to run them here in the fall should we be  
14 fortunate enough to -- to have you grant those dates.

15 However, those race dates are, you know, arguably the  
16 property of Oak Tree and we would want to respect that, and so  
17 it -- it would depend upon whether they would allow us to use  
18 them. If they would allow us to use them we would like to run  
19 them, we will run them. We would need to make sure there  
20 weren't any, you know, strings attached that -- that -- that  
21 didn't make sense or that we couldn't live up to. But assuming  
22 that there were no strings attached then, yes, we would be  
23 running those fall stakes races if -- if Oak Tree permitted us  
24 to do so.

25 COMMISSIONER HARRIS: How about the California Cup

1 date?

2 MR. DARUTY: Well, Cal -- Cal Cup is an interesting  
3 issue. Obviously, it is a longstanding, you know, tradition  
4 here in California that -- that many people feel very strongly  
5 about. I will say that in the recent past it has not been very  
6 successful from a financial standpoint. We're open to  
7 discussing Cal Cup and figuring out a way that we could put on  
8 that event that makes economic senses. I don't think we would  
9 be willing or in a position to -- to fund significant losses or  
10 significant purse overpayments to keep it in effect as it has  
11 existed in the past. However, if we can work with the  
12 industry, with the breeders, with the TOC, with the other  
13 interests in the California industry to make the Cal Cup Day  
14 that makes economic sense then we would absolutely be in favor  
15 of that, as well.

16 CHAIR BRACKPOOL: We may have some more questions for  
17 everybody in a moment but I think that's good just for this  
18 moment.

19 Chillie?

20 MR. CHILLINGWORTH: Sherwood Chillingworth, Oak Tree  
21 Racing. As you know, we've had kind of a harrowing past ten  
22 months. And I just want to say to begin with that we really  
23 appreciate the accommodations that Hollywood Park provided for  
24 us last year. They did a marvelous job of changing the meet  
25 that was supposed to be run here to their venue, and they were

1 very helpful and you did a lot of things that would not have  
2 been possible without your complete cooperation.

3           We have an agreement with Hollywood Park that we will  
4 seek dates to be -- our dates to be run at Hollywood Park this  
5 year. And we continue to believe that's our obligation.

6           I must say that obviously you have to be brain dead  
7 not to have heard conversations going on with regard to our  
8 coming to -- to Santa Anita. And what I want everybody to know  
9 is we have attended no meetings involving this issue at all.  
10 We were presented with an offer by Santa Anita about a week-  
11 and-a-half ago and we told them that unless we knew that the  
12 intent of this Board was to move the racing dates to Santa  
13 Anita we couldn't comment on it because it would be unfair to  
14 Hollywood Park.

15           And the point is we do want to race somewhere. And  
16 if we race at Hollywood Park we'd be delighted to race there.  
17 And we -- we will certainly consider Santa Anita's offer. We  
18 really haven't examined in depth because we thought it was  
19 unfair to do so until such time as the Board indicated that  
20 they wanted the dates -- our dates run at Santa Anita. So I'll  
21 leave it at that.

22           CHAIR BRACKPOOL: I think it has been a harrowing ten  
23 months. Ten months ago you had a full head of hair, didn't  
24 you, when you standing in front of us?

25           MR. CHILLINGWORTH: My wife sent me to her salon

1 barber yesterday to get my hair cut. It's the first time I've  
2 ever been there and done that.

3 CHAIR BRACKPOOL: Thank you for that.

4 I have -- before we get to Commissioners' comments I  
5 have one speaker on this issue, Mace Siegel. If you think you  
6 can be heard, Mace, I'll let you --

7 MR. SIEGEL: Yeah, I think so. I, for one, would be  
8 delighted to see Oak Tree return to its home at Santa Anita. I  
9 think it's obvious that that's obviously thing to do. They're  
10 loved over here. And I want to make sure that we give -- that  
11 this does not become a precedent where Santa Anita has been  
12 given Oak Tree's dates.

13 Oak Tree must keep alive. It's the heart of  
14 California. It is not for profit. It is everything good in  
15 the industry. And we need to make sure that next year Oak Tree  
16 is Oak Tree and not Santa Anita Oak Tree. Thank you.

17 CHAIR BRACKPOOL: Thank you. Thank you, Mace. Thank  
18 you.

19 I think the issue before us is -- is a difficult one,  
20 the same as it was in 2010. I think what is crucial is that we  
21 all continue to work toward the permanent calendar. I think  
22 there, as I said earlier and at the last Board meeting, there  
23 have been very good discussions going on towards that.

24 But I think the issues we face this year are at this  
25 Board fairly simple, in my view, and that is that the meet last

1 year at Hollywood Park, when combined with the Hollywood Park  
2 fall meet following, was not the meet that we'd all hoped for.  
3 And it appears that it's just too long a period of time in one  
4 location. It's no doubt that historically the crowds here are  
5 ready for racing at that time of the year and it seems that  
6 this would be, to me, the more logical venue at that time of --  
7 time of the year.

8 I understand the difficulties that you have, Oak  
9 Tree, in terms of applying for anything because you made  
10 various commitments. But this Board has to award the dates the  
11 way it believes the place should be.

12 So before we go ahead and make any motions or ask for  
13 any other comments, the only other thing I would say is that  
14 this is difficult. The TOC stood up and said -- I see the TOC  
15 have stood up again. But the -- that means sit down. But the  
16 -- the TOC have stood up and said they, you know, it would be  
17 great, they'd like to see some more details. Everybody would  
18 like to see some more details. You know, I just don't think  
19 that we can do in this sport what we did last year, which was  
20 to keep going and going and going on this. I think we have to  
21 make the decision and then, you know, the individual race  
22 applications are going to have to reflect that those decisions  
23 are properly discussed and properly thought through.

24 I think it's critical for the Breeder's Cup prep  
25 races that we bring some certainty and some closure to this

1 issue as soon as soon as possible. And so to me, making a  
2 decision today and moving on is just what's necessary to add  
3 some certainty to the -- to the process.

4 Guy, you obviously wanted to say something  
5 additional. So --

6 MR. LAMOTHE: Yes. Pardon me for that. Guy Lamothe,  
7 TOC. As we look forward with any purse agreement there are  
8 issues and concerns that we address in the purse agreement.  
9 And a few of those items that we will -- we hope to evaluate  
10 are the Win and You're In races, and to make sure those are  
11 kept in tact, whoever is running the meet.

12 Secondly, we know there have been efforts to track  
13 Breeders' Cup -- future Breeders' Cup races here, in the future  
14 here in California. And we want to understand what is the best  
15 vehicle to attract those future events, whether it's a for-  
16 profit or not-for-profit entity such as Oak Tree.

17 And one of the other areas that we evaluate each meet  
18 are the ADW contracts and television exclusivity. Those are  
19 critical issues to handle, and purses. And we look forward  
20 to -

21 CHAIR BRACKPOOL: Well, let me --

22 MR. LAMOTHE: -- getting a decision on this.

23 CHAIR BRACKPOOL: Let me respond to those -- let me  
24 respond to those three, if I may, while you're standing there.  
25 Commissioner Derek and I had a series of meetings recently with

1 the Breeders' Cup people. I think that they are very much  
2 pushing to see that this gets resolved so that they have  
3 certainty. They would very much like to keep the Win and  
4 You're In races going, as far as that's concerned.

5 I think that the discussions about hopefully getting  
6 the Breeders' Cup back here on a, you know, longer term,  
7 perhaps, basis have been fruitful, and we're trying. And I  
8 think that the -- I don't think the ownership issue at this  
9 stage is the -- is the burning issue because I think there have  
10 been some resolutions to the concerns that were -- that were  
11 raised there.

12 The third issue you raise about distribution of the  
13 signal was covered when we issued MID the waiver of owning  
14 multiple businesses. And I don't have the waiver language in  
15 front of me right now. But to paraphrase, if Santa Anita was  
16 awarded more dates then they would have to demonstrate to this  
17 Board that they had expanded their signal. And they can do  
18 that by either getting the wide distribution that we've all  
19 been hoping they do or go on a nonexclusive basis. So that was  
20 covered in the waiver agreement, so it's there, that they  
21 committed to.

22 MR. LAMOTHE: Very good. Thank you.

23 CHAIR BRACKPOOL: Let me ask Scott Daruty to stand  
24 back up for a moment. I mean, I just told you what I think is  
25 in the waiver agreement, so I want to make sure that you --

1 that you agree that additional dates means wider distribution.

2 MR. DARUTY: That was a condition that you imposed on  
3 our waiver. That's correct.

4 CHAIR BRACKPOOL: Okay. As far as the other two  
5 questions, well, the first question about the Win and You're In  
6 races, you presumably would be trying to work with Oak Tree on  
7 those because those are -- the Win and You're In races as their  
8 currently set up are Oak Tree graded stake races.

9 MR. DARUTY: Yes. And we would absolutely, if we're  
10 fortunate enough to have these fall dates, we would absolutely  
11 love to run those. And we'll work with Oak Tree to see if  
12 they're willing to allow us to do that.

13 CHAIR BRACKPOOL: Okay. Do I have any other  
14 questions from Commissioners?

15 VICE CHAIR ISRAEL: Are -- we're looking at these  
16 dates, but are we looking at December dates also?

17 CHAIR BRACKPOOL: Yes.

18 VICE CHAIR ISRAEL: Yeah.

19 CHAIR BRACKPOOL: For -- for Hollywood Park.

20 COMMISSIONER HARRIS: Hollywood Park, yeah.

21 CHAIR BRACKPOOL: Yeah. Yeah. Yeah. Thank you for  
22 the moment.

23 The -- I have no other speakers on the issue. So I  
24 suppose the -- we could do this one of two ways. We could  
25 either have two motions or we could make a motion and see

1 what -- see what we feel. I personally feel very strongly that  
2 for 2011 this meet needs to be held at Santa Anita with the  
3 accommodations made to Oak Tree. That -- that would have to be  
4 worked out and that, again, will have to be worked out prior to  
5 them making a license application to us. But I think we need a  
6 successful meet, and I think history shows us that this is the  
7 location that at that time of the year.

8 COMMISSIONER ROSENBERG: Mr. Chairman, the  
9 application for the dates -- Oak Tree applied for the dates at  
10 Hollywood Park technically --

11 CHAIR BRACKPOOL: Right.

12 COMMISSIONER ROSENBERG: -- correct?

13 CHAIR BRACKPOOL: Correct.

14 COMMISSIONER ROSENBERG: And Santa Anita applied it  
15 for on their own behalf; correct?

16 CHAIR BRACKPOOL: Right.

17 COMMISSIONER ROSENBERG: It would -- it seems -- and  
18 then we heard about some kind of a lease that Oak Tree made  
19 with -- with --

20 CHAIR BRACKPOOL: With Hollywood Park, right.

21 COMMISSIONER ROSENBERG: It would seem strange that  
22 Hollywood Park is not -- is not commenting on the dates that  
23 they'd like to have, even though their not their dates.

24 CHAIR BRACKPOOL: Well, they're just --

25 COMMISSIONER ROSENBERG: I know it's not their --

1 they're the landlord.

2 CHAIR BRACKPOOL: They're the landlord. I'm more  
3 than happy to ask Hollywood Park to stand up and speak on that.

4 MR. LIEBAU: Jack Liebau from Hollywood Park. There  
5 evidently have been a lot of things going on behind the scenes,  
6 as reported by Steve Anderson in the day's Form. And all I can  
7 say is Steve does not have the same reputation as Bob Woodward  
8 has an investigative reporter. So there must be a lot of  
9 things that have been going on. I haven't been party to them.  
10 I don't know what they are.

11 We have come to the aid of -- of Hollywood Park -- or  
12 Oak Tree twice, and we're glad to do that. And I thank Mr.  
13 Chillingworth for his remarks and seem to appreciate what we've  
14 done for them. I guess we --

15 CHAIR BRACKPOOL: I think we would be remiss --

16 MR. CHILLINGWORTH: We would --

17 CHAIR BRACKPOOL: -- as a Board if we didn't thank  
18 you for stepping in the way you did last year, as well, Jack.

19 MR. LIEBAU: I'm -- I will say that, you know, being  
20 things what they are, I mean, I've rethought that with  
21 hindsight but we did it and we're glad we did it.

22 The one thing that I would say that I would have to  
23 take exception to that Mr. Daruty said was I -- I will not  
24 admit that Santa Anita has a better racing facility than  
25 Hollywood Park. I invite all of you to make a personal

1 inspection of the backside of Hollywood Park and -- and compare  
2 it to the -- what is here at Santa Anita, and then take into  
3 consideration all of the promises that have been made over the  
4 years by the same people that now control and own -- own Santa  
5 Anita as to the improvements that would be made, and they have  
6 not been made. There's just no question about that.

7           As -- as far as the track is concerned, everybody has  
8 their own ideas about a track. But I will say this, that at  
9 this point in time I also think that Hollywood Park has a  
10 better functional track than Santa Anita. That's my opinion.  
11 Mr. Daruty voiced his opinion. And as you know, we're both  
12 entitled to our opinion.

13           CHAIR BRACKPOOL: Healthy competition. I love it.  
14 Jack --

15           MR. LIEBAU: And that's about -- that's about all I  
16 have to say. I think, you know, I realize that the -- the  
17 decision is up to the Board and that's the way it is.

18           CHAIR BRACKPOOL: And do -- do you believe that  
19 having the Oak Tree meet at Hollywood Park has any form of  
20 detrimental effect on your winter meet?

21           MR. LIEBAU: I think it's very hard to judge what --  
22 what's going on in the marketplace today. I will say that we  
23 put on the Oak Tree meet under very -- very tough conditions.  
24 You know, I don't know how many weeks we had before it opened.  
25 Certainly the -- the meet that we had that was the -- was the

1 traditional Hollywood Park meet turned out to be superior  
2 than -- than the Oak Tree meet. I will say that.

3 I think that if you look at the purses, though, that  
4 were put on and, Mr. Chillingworth can talk to this, is the  
5 purses that were put on at the Oak Tree meet in 2010 were  
6 probably higher than the purses there, and that was because of  
7 the contribution that Oak Tree made to those purses. But  
8 there's no question, the purses were higher at -- at -- at  
9 Hollywood Park in 2010 during the Oak Tree meet than they had  
10 been in the past. And I think I have to leave it there. I  
11 don't think there's much more I can say.

12 CHAIR BRACKPOOL: Thank you. Do I have any other  
13 comments?

14 Well, I would make -- Jackie you're going to have to  
15 help me out with the calendar here.

16 MS. WAGNER: Okay.

17 CHAIR BRACKPOOL: I would be prepared to make a  
18 motion that Fairplex is awarded the 8th through the 26th of  
19 September, that -- and just one question before I make this  
20 motion.

21 Is LATC allowed to operate this meet, or would it be  
22 PRA?

23 MS. WAGNER: PRA.

24 MR. DARUTY: Scott Daruty. Our application is  
25 actually in the name of Pacific Racing Association to run at

1 Santa Anita Park.

2 CHAIR BRACKPOOL: Right. So your dates would be PRA  
3 dates on behalf of Santa Anita, it will be the 28th of  
4 September through the 6th of November. Hollywood Park winter  
5 dates, you told me earlier, were -- I wrote it down on another  
6 piece of paper -- I got it here, I got it here --

7 EXECUTIVE DIRECTOR BREED: November the 9th.

8 VICE CHAIR ISRAEL: It's November 8th --

9 CHAIR BRACKPOOL: -- November the 9th --

10 VICE CHAIR ISRAEL: November 9th through --

11 CHAIR BRACKPOOL: -- through --

12 VICE CHAIR ISRAEL: -- December 18th.

13 CHAIR BRACKPOOL: -- December the 18th. So I would  
14 make a motion that the dates be September the 8th through the  
15 26th of September for Fairplex. They would be the 9th --  
16 sorry, the 28th of September through the 6th of November at  
17 Santa Anita. And they would be the 9th of November through the  
18 18th of December at Hollywood Park.

19 What I would say is that -- and I speak for myself  
20 and the rest of the Board -- that I think we showed our  
21 appreciation toward Oak Tree last year, and we continue to  
22 share that same feeling of the -- of the good that -- that Oak  
23 Tree has done for the industry. And I would very, very  
24 strongly encourage Santa Anita, if they were to get these  
25 dates, to continue to work in cooperation with Oak Tree to

1 allow all the good that has come from this great organization  
2 called Oak Tree over the years to continue to benefit the sport  
3 in 2011, and that nothing we're doing here is precedent setting  
4 at all. But I would not want to make this award without --  
5 make this motion for an award without recognizing and  
6 acknowledging the great accomplishments that Oak Tree have  
7 brought and continue to bring to this sport. And I would, as I  
8 say, strongly encourage Santa Anita to understand that.

9 So that would be my motion. Do I --

10 VICE CHAIR ISRAEL: I'll second.

11 COMMISSIONER CHOPER: You want to add a thanks to  
12 Hollywood Park?

13 CHAIR BRACKPOOL: Well, I would certainly be prepared  
14 to do that in the motion, and I would add a vote of sincere  
15 thanks. Commissioner Choper brings it up. I think it's right  
16 to add it to the motion, a vote of sincere thanks to Hollywood  
17 Park for stepping in so graciously last year on such short term  
18 notice. But we're certainly here to do whatever is in the best  
19 interest of the sport.

20 So do I have a second?

21 VICE CHAIR ISRAEL: Second.

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

24 ALL MEMBERS: Aye.

25 CHAIR BRACKPOOL: Anybody opposed? No.

1           Those are the racing dates for the balance of 2011.

2 Thank you.

3           MR. CHILLINGWORTH: May I make one comment?

4           CHAIR BRACKPOOL: Please. Sherwood Chillingworth.

5           MR. CHILLINGWORTH: Sherwood Chillingworth, Oak Tree.

6 I just want to say, again, I know how disappointed Hollywood is  
7 that they're not going to get it this year. And having been  
8 through the ins and outs of being awarded dates and taken away  
9 dates, I sympathize with them a lot. They were very good to us  
10 and we really appreciate it.

11           I also want to make a statement that we're going to  
12 do everything possible to help California racing this year.  
13 And we -- we feel that's -- feel that's one of our  
14 responsibilities. And I'm glad we're back to a status where we  
15 can be a contributor to the welfare of horse industry in a  
16 manner that we usually are. Thank you.

17           CHAIR BRACKPOOL: I think we welcome that, as well,  
18 Chillie. Thank you for those --

19           VICE CHAIR ISRAEL: Thank you, Chillie.

20           CHAIR BRACKPOOL: -- for those words.

21           VICE CHAIR ISRAEL: You got a hell of a lot of  
22 mileage out of that haircut, Chillie.

23           CHAIR BRACKPOOL: Item number 10, discussion and  
24 action by the Board regarding the status of the labor  
25 negotiations with the advance deposit wagering, ADW, providers.

1 MS. WAGNER: Jackie Wagner, CHRB staff. If you will  
2 recall, at the Board's last meeting we entertained the  
3 applications from our advanced depositing wagering providers to  
4 include TVG, YouBet, XpressBet -- and XpressBet. Now YouBet  
5 was withdrawn, and we have now the providers TVG, Churchill  
6 Downs doing business as TwinSpires and Express Bet.

7 At the Board's last meeting the applications were  
8 approved with no conditions for TVG. The applications were  
9 approved for the other two wagering providers conditioned upon  
10 several items, one of the main ones being the negotiations --  
11 the successful negotiation of a labor agreement between the  
12 parties. The parties were instructed to go ahead and try to  
13 come to a conclusion, and they were instructed that there would  
14 be a status of the negotiations presented at this meeting. If  
15 there was no resolution at this meeting the Board will be  
16 entertaining the applications again at the March meeting.

17 The providers are here to make -- to give the Board  
18 an update on the status of negotiations --

19 VICE CHAIR ISRAEL: Is --

20 MS. WAGNER: -- with labor.

21 VICE CHAIR ISRAEL: Is somebody going to appear for  
22 XpressBet?

23 MS. WAGNER: XpressBet. We did receive a letter from  
24 XpressBet. They are unable to be in attendance here. But they  
25 have the staff and the Board that they have not been able to

1 reach an agreement with labor.

2 VICE CHAIR ISRAEL: Well, Scott, Scott, can you --

3 MR. BLACKWELL: I can probably answer questions, too,  
4 so I'm going to sit up --

5 VICE CHAIR ISRAEL: Yeah. You might as well sit  
6 there. How many negotiations were held, if any?

7 You know, the union representative should be up here  
8 also.

9 MR. CASTRO: That's my man right here.

10 VICE CHAIR ISRAEL: Okay. Thank you. Who wants to  
11 speak on behalf of --

12 MR. BLACKWELL: Brad Blackwell on behalf of  
13 TwinSpires. To your question, Commissioner Israel, TwinSpires  
14 has met in person with union representatives once and we have  
15 had numerous conversations over the phone and via email. And  
16 obviously, TwinSpires is here today to inform the Board that we  
17 do not have a labor agreement reached.

18 VICE CHAIR ISRAEL: When was the last time you met?

19 MR. BLACKWELL: The last time we had a discussion  
20 would have been via email this week.

21 VICE CHAIR ISRAEL: Well, have you made any -- I'll  
22 ask the union. Richard, have you made any progress?

23 MR. CASTRO: We've made no progress.

24 VICE CHAIR ISRAEL: State your name for the record.

25 MR. CASTRO: My name is Richard Castro representing

1 Parimutuel Employees Guild. We have not made any progress.

2 VICE CHAIR ISRAEL: Has anybody offered a compromise?

3 MR. CASTRO: Compromises have been discussed. We  
4 still have not been able to come --

5 VICE CHAIR ISRAEL: Is the issue is still over  
6 staffing, vis a vis white labels?

7 MR. CASTRO: Yeah, we want protection from  
8 subcontracting.

9 VICE CHAIR ISRAEL: Okay. Let me just say one more  
10 thing then. Has anyone considered a proposal whereby if  
11 certain benchmarks are met by the white labels then that would  
12 kick into effect some staffing levels relative to the union?

13 MR. CASTRO: I'm not aware of any of those kinds of  
14 discussions. But we had --

15 VICE CHAIR ISRAEL: Have you considered suggesting  
16 that, to find some middle ground? I mean, that's -- I'm  
17 particularly frustrated that this has been going on now for,  
18 well, the first three, four months, whatever it's been. And  
19 we're here on day whatever, 100 and something, and you're in  
20 the exact same place we were on day 1.

21 MR. CASTRO: The irritation has been a lot longer  
22 than that. You approved DelMar.com -- DelMarBets.com, and Oak  
23 Tree -- DelMarBets.com or whatever it is, and we objected to  
24 that. That came to you. That was not even in your -- in the  
25 application when that was voted on. We didn't even find out

1 until that was going on for about six months. Let me finish.

2 CHAIR BRACKPOOL: So how can something not be in an  
3 application and be voted on?

4 MR. CASTRO: Well, ask Kirk. We brought that up to  
5 your attention. We didn't hear any --

6 VICE CHAIR ISRAEL: All right. Well --

7 MR. CASTRO: -- discussion of it --

8 VICE CHAIR ISRAEL: Look --

9 MR. CASTRO: -- when their application was going  
10 forward.

11 VICE CHAIR ISRAEL: Okay. But I'm in favor of  
12 initiatives that benefit the industry that might become  
13 productive and expand into something worthwhile. And I also  
14 understand that in order for a company -- I understand the  
15 union needs to protect hits members. And I understand also  
16 that a company needs to protect its investment and it's a  
17 gradual ascent if it's going to be successful.

18 What I would like for you to try to find a way to  
19 accomplish is where those lines cross where the companies feel  
20 fairly confident that these initiatives are going to succeed,  
21 that these white labels will become productive, and then you'll  
22 get some staffing confidence from them, some staffing  
23 concessions, and the jobs will be created. If they don't try  
24 to create these things there will be no jobs.

25 COMMISSIONER CHOPER: What are the white labels?

1 VICE CHAIR ISRAEL: The DelMarBets.com.

2 COMMISSIONER CHOPER: Oh.

3 VICE CHAIR ISRAEL: They're operated through the --

4 COMMISSIONER CHOPER: I know.

5 VICE CHAIR ISRAEL: -- the existing platforms.

6 COMMISSIONER CHOPER: I know. I understand.

7 VICE CHAIR ISRAEL: And it's just, you know, the

8 computers. You know, you could call a dot com anywhere.

9 So I think you all have to get more reasonable here  
10 and find a new way of doing business to create new business and  
11 create more jobs --

12 MR. CASTRO: Okay.

13 VICE CHAIR ISRAEL: -- in a declining industry.

14 MR. CASTRO: All right let me answer this way. We  
15 did -- we gave the industry back 22-and-a-half percent. We  
16 recognize the industry was hurting. When we did that we asked  
17 to have a kiosk. Those kiosks were supposed to be in place on  
18 September 10 -- or September 2010. There has not been one  
19 kiosk established, north or south. What we also wanted --

20 VICE CHAIR ISRAEL: Describe a kiosk. What do you  
21 mean by that?

22 MR. CASTRO: We -- a place where, like at the  
23 airport, the little booths, where you can advertise racing. We  
24 also wanted to bring our pal, the ADW companies, into it as  
25 well. We thought that would be a great way to introduce new

1 fans to racing, put it in supermarkets, put it in malls, put it  
2 in train stations. It has not been done yet.

3 VICE CHAIR ISRAEL: Is this -- is this part of some  
4 labor agreement that we're not aware of --

5 MR. CASTRO: No. We -- we --

6 VICE CHAIR ISRAEL: -- these kiosks?

7 MR. CASTRO: When we gave back to the industry 22-  
8 and-a-half percent --

9 VICE CHAIR ISRAEL: Right.

10 MR. CASTRO: -- there's a side agreement. And in the  
11 side agreement we agreed with the employers that they would  
12 establish kiosks. And the concept that we have with the kiosks  
13 is to bring our great product out into the community to try to  
14 get new fans, new betters, shopping malls, airports, whatever.  
15 There was a deadline, September 2010. They have done --  
16 they've talked about it. I won't say they've done nothing.  
17 They talked about it.

18 COMMISSIONER CHOPER: Is that authorized by state  
19 law, we can put kiosks in airports?

20 MR. CASTRO: We believe it's legal.

21 VICE CHAIR ISRAEL: The kiosk would be a place to --  
22 so you can place a bet?

23 MR. CASTRO: We don't -- we'd -- we -- we have not  
24 finalized what would happen with these kiosks. But what we  
25 wanted to do was bring in the ADW companies, as well.

1           COMMISSIONER CHOPER: Well, if they're not going to  
2 place bets, what are they going to do there at the kiosks?

3           MR. CASTRO: Well, I think it would be great if  
4 someone could go to the University of California and be able to  
5 find out that there's a racetrack at Golden Gate Fields and  
6 take a bus and bring them down to the track.

7           COMMISSIONER CHOPER: I got it.

8           MR. CASTRO: The same way with the fairs --

9           COMMISSIONER CHOPER: So this is --

10          MR. CASTRO: -- trying to bring in new people.

11          COMMISSIONER CHOPER: This is advertising --

12          VICE CHAIR ISRAEL: This is a marketing --

13          COMMISSIONER CHOPER: -- you're talking about --

14          VICE CHAIR ISRAEL: -- a marketing effort --

15          MR. CASTRO: It's -- it's --

16          COMMISSIONER CHOPER: -- a marketing effort?

17          VICE CHAIR ISRAEL: -- right?

18          COMMISSIONER CHOPER: I see.

19          MR. CASTRO: But -- but it could be more than that.

20 It could be anything.

21          COMMISSIONER ROSENBERG: Is there going to be a union  
22 employee in the kiosk? Is there an employee in the kiosk  
23 there?

24          MR. CASTRO: Yes. There would be a -- there would be  
25 one person -- at least one person in the kiosks, north and

1 south. That's what we agreed to. And we gave back 22-and-a-  
2 half percent --

3 COMMISSIONER CHOPER: Yeah.

4 MR. CASTRO: -- plus a whole lot more. And we still  
5 don't have a phone job.

6 Now when we use this man's fine -- it's not this one,  
7 it's XpressBet. When we use this XpressBet services and you go  
8 into DelMar.com you're dealing with a California resident  
9 paying California taxes, making a bet at a California facility,  
10 but when he picks up that phone that bets being done in Oregon.

11 We are being displaced. We wanted this here in  
12 California. We thought the industry would rally behind us and  
13 help us because they were so grateful that we gave so much  
14 back. And if I had a knife I'd stick it in my back because  
15 that's basically what's happened to us.

16 CHAIR BRACKPOOL: Commissioner Choper has a question.

17 MR. CASTRO: Sure.

18 COMMISSIONER CHOPER: I didn't know that kiosks  
19 were -- I mean, you have a contract for kiosks; right?

20 MR. CASTRO: Yes, we do.

21 COMMISSIONER CHOPER: So that's not this contract.  
22 Am I wrong about that? I'm just trying --

23 CHAIR BRACKPOOL: Just --

24 MR. CASTRO: You -- you asked me --

25 CHAIR BRACKPOOL: No. No.

1 MR. CASTRO: -- about what we've done --

2 CHAIR BRACKPOOL: We're trying to stay to this  
3 contract.

4 COMMISSIONER CHOPER: Just trying to --

5 CHAIR BRACKPOOL: We're trying to stay to this  
6 contract.

7 MR. CASTRO: We want to bring the ADW people into the  
8 kiosks.

9 COMMISSIONER CHOPER: Okay. Let me ask you just a  
10 couple of questions. My understanding, and you know, is -- I  
11 read the whole thing that Mr. Rosenfeld sent us, and my  
12 understanding is that the difference of what the union wants is  
13 a veto power over any subcontractors. That puts it in a  
14 phrase. Is that right or wrong?

15 MR. WHITE: Jake White. I'm the attorney  
16 representing --

17 CHAIR BRACKPOOL: You have to speak -- there's people  
18 listening.

19 MR. WHITE: Jake White, Attorney representing the  
20 union. I think what the union -- Richard, I think, was trying  
21 to give some background to put this in context.

22 And to respond to your question, I think what the  
23 union is trying to do is protect its jobs. It's made  
24 concessions, like the one that Richard had described,  
25 concessions that resulted in the passing of this legislation

1 amendment to the statutes to keep jobs here in California.

2 And so what we're asking for this Board to do is to  
3 keep jobs in California, to respect the legislation, respect of  
4 B and P Code, and to allow us to have the subcontracting  
5 language so we can protect the union and protect the jobs. So  
6 it's a long way of answering your question. I think the answer  
7 is yes.

8 COMMISSIONER CHOPER: I think the answer is yes.  
9 Okay.

10 MR. WHITE: Yes.

11 CHAIR BRACKPOOL: Yes.

12 COMMISSIONER CHOPER: So my question is: Both  
13 XpressBet and -- and TwinSpires signed this agreement, this  
14 implementation of AB765? Now I don't know. I've read it. You  
15 know, contracts are not the easiest things sometimes to read.  
16 But it says in provision two, this obligation -- that's now a  
17 part of the -- would you mind taking a look at that --

18 MR. WHITE: Sure.

19 COMMISSIONER CHOPER: -- while I go over it. It's  
20 about a little bit below the middle of number two. It says,

21 "This obligation is the obligation on the part of the  
22 ADW provider to recognize and bargain. It extends to  
23 employees of ADW provider."

24 Right? Would you read the next words?

25 CHAIR BRACKPOOL: What page are we on?

1 VICE CHAIR ISRAEL: Exhibit A. Here.

2 MR. WHITE: Commissioner Choper, if I'm following  
3 you, I think you're -- the next --

4 COMMISSIONER CHOPER: Yeah.

5 MR. WHITE: -- part of that is "or any employees of  
6 subcontractors to ADW provider."

7 COMMISSIONER CHOPER: I'm sorry, maybe I'm dumb, but  
8 I don't get it. You haven't -- why have you not agreed to  
9 extend your obligations to subcontractors? Have you or have  
10 you not?

11 MR. WHITE: Yes. And Commissioner Choper, if I will,  
12 TwinSpires is in a little bit different position because, one,  
13 we've unfairly been brought into an issue that's really between  
14 the union and XpressBet because of their white label with Oak  
15 Tree and Del Mar.

16 COMMISSIONER CHOPER: Yeah.

17 MR. WHITE: I think that's been discussed on the  
18 record. TwinSpires does not offer a white label to California  
19 residents.

20 But to your point, I think that this issue is  
21 addressed in the previous agreement that we have agreed to.

22 COMMISSIONER CHOPER: Maybe I ask Mr. Daruty. Can I  
23 ask you a question? You signed this agreement?

24 MR. DARUTY: Yes. Scott Daruty, and I'm appearing on  
25 behalf of XpressBet.

1 COMMISSIONER CHOPER: So -- so --

2 MR. DARUTY: We've -- we've --

3 COMMISSIONER CHOPER: -- if you're employees who are  
4 working wherever Mr. Castro said, right, in respect to Oak Tree  
5 and DelMar.com, are employees of a subcontractor to the ADW  
6 provider, are they covered by this contract? Just yes or no.

7 MR. DARUTY: Yes.

8 COMMISSIONER CHOPER: Well, then I -- in where I  
9 began, I don't get it.

10 CHAIR BRACKPOOL: Yeah. I'm the same way.

11 MR. DARUTY: Scott -- Scott Daruty. You're -- you're  
12 not the only one who's confused.

13 COMMISSIONER CHOPER: I'm -- so maybe wait. So --

14 MR. DARUTY: I think this issue is covered.

15 COMMISSIONER CHOPER: So I don't mean to be -- to be  
16 abrupt like that. Why doesn't that agreement cover what you  
17 want?

18 MR. CASTRO: Because it didn't bring any of the jobs  
19 here to California. I -- I guess I didn't make myself clear at  
20 first.

21 COMMISSIONER CHOPER: No. Go ahead. I'm sorry.

22 MR. CASTRO: If you have a California company and you  
23 have a California resident that's walking into a California  
24 facility where we do have mutual clerks but the person decides  
25 to use the ADW provider, when he picks up his cell phone in

1 that facility and makes his wager the wager isn't going -- the  
2 wager isn't -- he's not calling a person in California. He's  
3 not calling one of our members. He's calling somebody in  
4 Oregon or in Pennsylvania. When we backed this legislation our  
5 understanding was with the industry behind me it would promote  
6 jobs here in California.

7 VICE CHAIR ISRAEL: Okay. Richard let me interrupt  
8 you and ask a question.

9 COMMISSIONER CHOPER: Can I -- can I --

10 VICE CHAIR ISRAEL: You have something?

11 COMMISSIONER CHOPER: -- ask one more?

12 CHAIR BRACKPOOL: Yeah.

13 COMMISSIONER CHOPER: Just one more.

14 VICE CHAIR ISRAEL: Oh.

15 COMMISSIONER CHOPER: The statute specifically says  
16 that it applies to employees who take bets of the very kind  
17 you've just described of employees of the ADW company, whether  
18 in California or outside the state; right? So the statute  
19 provides for that and this contract provides for it.

20 So I mean, it doesn't say that the employees have to  
21 be in California. It says that the -- that their agreement, by  
22 doing business in California the ADWs agree that if they have  
23 employees doing business with the California better, right,  
24 they are -- they're subject to the legislation, and they're  
25 also subject to this contract that these guys signed.

1           So why haven't you got -- I understand that they  
2 have -- they have not agreed to bring the employees into  
3 California. I mean, you don't -- you -- I do understand that.  
4 But I guess I don't understand why there's any statutory  
5 obligation on their part to do that outside of some, you know,  
6 nice intentions or something like that, good --

7           MR. CASTRO: Well, we're --

8           COMMISSIONER CHOPER: -- you know, trying to help --

9           MR. CASTRO: We're not looking at --

10          COMMISSIONER CHOPER: -- California.

11          MR. CASTRO: We're looking at this as business.

12          COMMISSIONER CHOPER: YES.

13          MR. CASTRO: And we're concerned about our members.

14          COMMISSIONER CHOPER: I understand.

15          MR. CASTRO: And we understood that this, in some  
16 way, would promote some jobs. We weren't asking for 25 phone  
17 jobs, 50 phone jobs, 75 phone jobs. At the last meeting some  
18 of the executives were asked, why can't you even give us two  
19 jobs, and we couldn't get an answer.

20                 Our concern goes farther than just what this states.  
21 What we got -- when we got concerned with this white label  
22 thing, what's to prevent them from opening a company in India?

23          COMMISSIONER CHOPER: Okay.

24          MR. CASTRO: How -- how do we -- how do you, as  
25 Rosenfeld stated, how do you and we deal with that if it's in

1 the Phillippines, if it's in -- if it's India? You've lost  
2 control, let's face it.

3 COMMISSIONER CHOPER: Would --

4 MR. CASTRO: We have lost control.

5 COMMISSIONER CHOPER: Would you give him, I mean,  
6 your answer to that? I'm just curious.

7 MR. DARUTY: I'm sorry. To the part about being --

8 COMMISSIONER CHOPER: Well, he says --

9 MR. DARUTY: -- in the Phillippines --

10 COMMISSIONER CHOPER: He -- he --

11 MR. DARUTY: -- or India?

12 COMMISSIONER CHOPER: He says, A, all the employees  
13 are outside the -- the state, and B, they could be outside the  
14 country, then they wouldn't even be subject to the statute of  
15 the contract; right?

16 MR. DARUTY: Well, I -- I guess I would respond this  
17 way. You know, XpressBet is -- is owned by the same parent  
18 company that owns Santa Anita and Golden Gate Fields, as you're  
19 all familiar with. As such I'd venture to say we're the  
20 largest employer of parimutuel clerks in the state of  
21 California. We take that relationship seriously. We take  
22 their, you know, their need for jobs seriously.

23 I think what you have to remember is the example that  
24 Mr. Castro gave was a California resident betting on a  
25 California race. And, yes, the phone -- the person answering

1 that phone may be in Oregon. But on that bet XpressBet only  
2 makes five cents on every dollar bet, whereas the California  
3 industry at a race track here makes the lion's share of the  
4 revenue. And that is helping to support this facility and the  
5 other racing facilities so that we can continue to have mutual  
6 clerks come to the live race tracks. So we are -- are giving  
7 back and -- and there have been and will be, you know, every  
8 year negotiations between the race tracks and the union  
9 regarding their -- their parimutuel positions.

10 But to pass this obligation on to the account  
11 wagering company who's already operating on pretty thin margins  
12 to begin with, we don't think makes sense. And also we --

13 COMMISSIONER CHOPER: I take it the Oregon employees  
14 are not members of any union --

15 MR. DARUTY: Well, the -- the --

16 COMMISSIONER CHOPER: -- or am I wrong?

17 MR. DARUTY: The purpose of this -- you are correct.  
18 But the purpose of the statute was to allow Local 280 the right  
19 to go to Oregon without interference from us and try to  
20 organize those people into a union, and we've certainly lived  
21 up to that statutory obligation.

22 COMMISSIONER CHOPER: I guess, you know, the elephant  
23 in the room is that the -- it's a hollow right. The rights of  
24 a California union pursuant to state law to go into Oregon and  
25 start organizing employees.

1 MR. CASTRO: You know, Scott and I have had  
2 discussions over telephone operators. And I was led to  
3 believe, maybe even two years ago when Ron Charles was here,  
4 that they thought they had plenty of room in this facility  
5 where space was empty and they could put a few phones in. Why  
6 hasn't that been done?

7 COMMISSIONER CHOPER: So cost -- would it have cost  
8 you more in Californian --

9 MR. DARUTY: It would.

10 COMMISSIONER CHOPER: -- to do it than Oregon?

11 MR. DARUTY: Very, very much more. Yes.  
12 Considerably more.

13 COMMISSIONER CHOPER: That's the answer.

14 CHAIR BRACKPOOL: That's the answer.

15 MR. CASTRO: It's -- it's a labor cost.

16 CHAIR BRACKPOOL: Yeah.

17 MR. CASTRO: We gave back 22-and-a-half percent. We  
18 gave additional money on top of that. To throw a few bucks  
19 back at us --

20 CHAIR BRACKPOOL: But now we're talking about --  
21 Richard, now we're talking about issues of the perceived, you  
22 know, fairness and just and etcetera. That's not we're here to  
23 do with this particular issue. What we're here to do with this  
24 particular issue is make sure that the ADW companies sitting in  
25 front of us have a labor agreement in place or we allow an

1 exemption to that company. That was what we agreed in January;  
2 right?

3           As I told you when you called me the other day, I was  
4 not happy just eight days after our meeting to get a letter  
5 saying, well, we're not going to meet anymore. We're not going  
6 to resolve this so you guys resolve this.

7           So what Commissioner Choper and Commissioner Israel  
8 are trying to do with these questions is get to the heart of  
9 what the specific dispute matter is, not revisit what may be  
10 correct, what may be incorrect views of history and the  
11 justification for people's positions over time. We -- we can't  
12 go back and solve all of that with this issue.

13           MR. CASTRO: I see.

14           CHAIR BRACKPOOL: What we are trying to do with  
15 this one issue is -- we're going to be forced at the March  
16 Board meeting to make a determination that either imposes the  
17 condition on the ADW companies if they want stay doing business  
18 or say we believe they're within their rights on this. And  
19 that was why I strongly encouraged you, both entities, to sit  
20 down and see if there wasn't a resolution to this.

21           MR. CASTRO: Let me --

22           CHAIR BRACKPOOL: Because --

23           MR. CASTRO: Let me clarify.

24           CHAIR BRACKPOOL: Let me just finish.

25           MR. CASTRO: Okay.

1           CHAIR BRACKPOOL:  Because if what you're asking us to  
2 do at the March meeting is rule on what would appear to be a  
3 fairly narrow issue rather than the broader set of issues that  
4 I understand why you'd want to be bringing them up now but  
5 they're not for us in this particular hearing, if you want us  
6 to rule on the narrow issue we're going to be forced to rule on  
7 the narrow issue, and one of the two sides is not going to like  
8 how we rule on that narrow issue.  And that was why we were  
9 trying to figure out -- and that was where I think Vice Chair  
10 Israel was going with the issue of, you know, is there a  
11 number?  Is there something that can be done?  And that was why  
12 I tried to give you 60 days to resolve this before making us  
13 rule on a narrow issue.

14           VICE CHAIR ISRAEL:  Here -- here's -- just give me a  
15 second, Richard.

16           I don't believe that DelMarBets.com and, what's the  
17 other one, OakTreeBets.com have hit any kind of threshold where  
18 they probably require any additional employees.  You know, the  
19 -- that new phone number, that new computer address shows up in  
20 the same place as the XpressBet phone number and computer  
21 address does.

22           What I'm suggesting is you find a way, when it does  
23 reach that threshold, that there's some accommodation made and  
24 those jobs are provided to you.  But it seems logical to find a  
25 way to let that business establish some roots and grow.  So

1 because it's -- I've said this to you before, this is Ford  
2 Motor Company coming out with a new kind of car that's still  
3 made in a Ford plant by Ford employees. And they don't have to  
4 put new employees on the payroll just because they've changed  
5 the name of a model, if you understand what I'm saying.  
6 They've added a model. It doesn't necessarily result in more  
7 jobs because they've probably replaced another model that they  
8 don't make anymore.

9           And that's the way I think you need to look at this.  
10 Because, you know, I think it's an attempt to grow the business  
11 so that there will be more jobs in the long run. What you guys  
12 have to do is find a compromise. I mean, maybe I'm being  
13 naive, but you need to find a compromise where the two lines  
14 cross and the jobs are created and then -- and then you're  
15 guaranteed those jobs.

16           MR. BLACKWELL: Are you speaking about sort of like  
17 revenue threshold requirements?

18           VICE CHAIR ISRAEL: Yes.

19           MR. BLACKWELL: Is that what you're talking about?

20 And how --

21           VICE CHAIR ISRAEL: Yes.

22           MR. BLACKWELL: What assurances would the union have  
23 that they could -- we're not -- they're not going to let us  
24 look at the books, I presume, to -- to see what kind of revenue  
25 that they're generating. So that's --

1           VICE CHAIR ISRAEL: That should be subject to  
2 negotiation, how you ascertain it. Maybe it's the number of  
3 bets that are taken, the number of calls that are made. You  
4 have to be a little creative here. What I'm doing is I'm  
5 asking you to engage in some sort of creative thinking --

6           CHAIR BRACKPOOL: He's asking you --

7           VICE CHAIR ISRAEL: -- to compromise.

8           CHAIR BRACKPOOL: He's asking you to do what we asked  
9 you both to do at the January meeting which is to see whether  
10 this is something you can resolve or we'll be forced to rule on  
11 the narrow issue in -- at the March meeting.

12           Commissioner Choper.

13           COMMISSIONER CHOPER: Yes.

14           CHAIR BRACKPOOL: And then we're going -- we're going  
15 to bring this to a conclusion.

16           COMMISSIONER CHOPER: You know, look, let me say  
17 this, this is not -- it's -- it -- we're here to do what we  
18 have to do. And I think that what you've done is -- I'm  
19 prejudging it a bit -- is pretty much all that you have to do  
20 legally, on the one hand. On the other hand, you know, the  
21 union's request sound, at least, you know, the words are very  
22 modest.

23           So I think Commissioner Israel, his suggestion is the  
24 right one. I think the particular -- I find the particular  
25 proposal he made to be pretty appealing. All right? It's

1 consistent with what you say and it's consistent with what  
2 they're looking for.

3           Why don't you take another shot at it and, I don't  
4 know, get -- get someone there who can mediate this thing in  
5 some way?

6           MR. CASTRO: We -- we have -- the union has filed a  
7 grievance on our collective bargaining agreement. December  
8 16th it was supposed to be heard, the same day that you had a  
9 Board meeting. It was the employer that canceled that. Then  
10 another date was set so that you wouldn't have to be in this  
11 mess with us.

12           VICE CHAIR ISRAEL: Who was the grievance filed with?

13           MR. CASTRO: We filed against the federation with --  
14 with the employer. Not -- not against the --

15           VICE CHAIR ISRAEL: Who hears -- who hears the  
16 grievance?

17           MR. CASTRO: Del Mar -- an arbitrator that's listed  
18 in our --

19           VICE CHAIR ISRAEL: Oh. Okay.

20           MR. CASTRO: -- collective bargaining agreement.

21           VICE CHAIR ISRAEL: Yeah.

22           MR. CASTRO: So it was -- it was set for December  
23 16th --

24           VICE CHAIR ISRAEL: I see. That's right.

25           MR. CASTRO: -- and the employer canceled it. We

1 were able to get a date a week later. The employer canceled it  
2 again. And I'm willing to bet if you asked if Ken Walker has  
3 showed up at this meeting, he knew this issue was going to come  
4 up, he's not going to be back there, because he doesn't want to  
5 tell you why he canceled it. But I can answer a lot of your  
6 questions. I don't think it's fair to say that we have not  
7 done due diligence on collective bargaining.

8           When I was down at Del Mar during the last meet we  
9 sat with Kirk Breed and he went over the figures with us. He  
10 opened the books and showed us everything. We, Craig Fravel,  
11 Doug Kempt and myself came to the conclusion that it would be  
12 probably be fair to add maybe one clerk, when you take our  
13 salary benefits and everything. We, the union, thought that  
14 they were handling more money than what they were. So they did  
15 share that information.

16           As far as that letter that you have, I sat with a  
17 staff person in your headquarters and they said that you guys  
18 were going to be wanting to know the progress. When we had our  
19 meeting, after this meeting we went to lunch, we realized that  
20 we couldn't resolve the issue.

21           So when I was up in Sacramento when your staff person  
22 suggested that I write a letter, I wrote the letter. However,  
23 even though we wrote the letter saying that we couldn't resolve  
24 it, as he says, we still, as well as Scoggins continued to talk  
25 and try to find a solution. He and I did talk about a possible

1 compromise on something. My executive board is so mad that  
2 they said, no, no compromise. Let the Board decide it.

3 VICE CHAIR ISRAEL: Well --

4 MR. CASTRO: I have tried.

5 VICE CHAIR ISRAEL: Then nothing's going to get done.

6 MR. CASTRO: We have tried.

7 VICE CHAIR ISRAEL: Richard, if -- if everybody is  
8 operating out of anger and -- and -- and they're too mad to  
9 reach a compromise then we're never -- nothing's going to  
10 change. That's just absurd.

11 MR. CASTRO: We have -- we have bent for this  
12 industry.

13 COMMISSIONER CHOPER: Isn't there a limit to the --

14 MR. CASTRO: We have --

15 COMMISSIONER CHOPER: Isn't there a limit to how many  
16 times the NLRB will permit the cancellation for grievance  
17 hearings?

18 MR. CASTRO: We're not --

19 COMMISSIONER CHOPER: I don't know. I don't know.

20 MR. CASTRO: -- covered under the NLRB.

21 COMMISSIONER CHOPER: Pardon me?

22 MR. CASTRO: We're not covered under the NLRB.

23 COMMISSIONER CHOPER: Well, who -- who is it? Who's  
24 doing it? Who's doing the grievance hearing?

25 MR. CASTRO: It would be an arbitrator in our

1 collective bargaining group.

2 COMMISSIONER CHOPER: Oh, yeah. Yeah. I'm sorry.

3 So isn't there some provision for enforcing the agreement?

4 Why -- why isn't that the answer? I'm sorry. Why isn't going

5 to an arbitrator for a breach in a collective bargaining

6 agreement --

7 MR. CASTRO: We -- we tried.

8 COMMISSIONER CHOPER: -- the answer?

9 MR. CASTRO: They -- we're not the ones that canceled

10 it.

11 CHAIR BRACKPOOL: Well, but there's going to --

12 COMMISSIONER CHOPER: But -- but --

13 CHAIR BRACKPOOL: That a statement --

14 VICE CHAIR ISRAEL: Eventually you'll have a hearing.

15 COMMISSIONER CHOPER: -- that you're going to have

16 it; right?

17 MR. BLACKWELL: That hearing is not going to occur  
18 until after you make a decision next month, that's the problem.

19 It -- it feels like, from what I understand, that the -- that  
20 they're sort of punting and waiting for you guys to make a  
21 decision. That's what -- the impression that I get.

22 COMMISSIONER CHOPER: Well, if -- if we make our  
23 decision --

24 MR. BLACKWELL: -- regarding -- on the arbitration.

25 COMMISSIONER CHOPER: -- our decision doesn't preempt

1 your grievance hearing --

2 MR. BLACKWELL: No. But --

3 COMMISSIONER CHOPER: -- or the result.

4 MR. BLACKWELL: Well, I mean ---- that arbitration  
5 would provide clarity on this issue.

6 VICE CHAIR ISRAEL: Perhaps -- wait. Wait.

7 MR. BLACKWELL: I think the parties --

8 VICE CHAIR ISRAEL: I don't know if this is within  
9 our purview. Is it -- would it be possible for us and --  
10 counsel --

11 MR. MILLER: Yeah.

12 VICE CHAIR ISRAEL: -- to order them to have this  
13 grievance hearing between now and our March meeting and -- and  
14 get some resolution? Do we have the --

15 COMMISSIONER ROSENBERG: I don't think that's our  
16 problem.

17 MR. CASTRO: Our -- our date is --

18 VICE CHAIR ISRAEL: You don't think that's what?

19 COMMISSIONER ROSENBERG: I think it's -- it shouldn't  
20 be our problem. This -- there's a hearing date coming. It's  
21 been set already. Let them have the hearing date when it comes  
22 up.

23 CHAIR BRACKPOOL: Well, that's in September.

24 VICE CHAIR ISRAEL: Well --

25 CHAIR BRACKPOOL: The issue in front of us, Richard,

1 is the ADW companies, these two ADW companies, are not being  
2 compliant -- have not yet signed a labor agreement. And one of  
3 the things they have to do in order to operate is to sign a  
4 labor agreement. So if we leave it until September then they  
5 are without a labor agreement until September. And that's one  
6 of the choices that will be in front of us in March.

7 But we're not -- going to Commissioner Choper's last  
8 point, if we were to rule, and there's various ways we can rule  
9 in March but one of the ways we could rule in March is we don't  
10 think this issue right now should be resolved by us, it should  
11 be resolved by an arbitrator, but they're allowed to continue  
12 to stay in business until that period of time.

13 COMMISSIONER CHOPER: Yes.

14 CHAIR BRACKPOOL: That's certainly one of the things  
15 we could rule on. Or we could rule for either side and then  
16 say to them if you don't like it don't operate an ADW business;  
17 right?

18 So those are really the three basic things that we  
19 can do at our March meeting. And I think what we're saying is  
20 you've heard the conversations that have taken place today, you  
21 should have all heard them because I don't think they're one-  
22 sided, and I think you should carry on talking and if not,  
23 we'll -- it'll be on the March agenda.

24 COMMISSIONER HARRIS: I'm not sure if we can compel  
25 them to not do business in other states. I mean, they could --

1 if we can tell them, look you cannot have employees conducting  
2 your business --

3 COMMISSIONER CHOPER: My understanding is that the  
4 statute says that the jurisdiction extends beyond the state  
5 lines. And I think that's -- I think everybody knows that  
6 that's seriously -- that's vulnerable --

7 VICE CHAIR ISRAEL: Yeah. It's a violation of  
8 commerce lies.

9 COMMISSIONER CHOPER: -- to -- to a constitutional  
10 challenge.

11 CHAIR BRACKPOOL: Right.

12 COMMISSIONER HARRIS: Yeah. But that's -- that's --

13 COMMISSIONER CHOPER: And that -- that again, that's  
14 the -- that's -- that's the elephant --

15 MR. DARUTY: But -- but we have agreed to that.

16 COMMISSIONER CHOPER: -- in the room.

17 MR. DARUTY: We -- we're not going to challenge that.  
18 We have agreed that they can go to Oregon and --

19 COMMISSIONER CHOPER: Yeah. I understand.

20 MR. DARUTY: -- and deal with it.

21 COMMISSIONER CHOPER: But --

22 CHAIR BRACKPOOL: Right.

23 COMMISSIONER CHOPER: -- on --

24 CHAIR BRACKPOOL: Did you wish to say something?

25 MR. GRESSETT: Yes. Steve Gressett, Board of

1 Directors, Local 280. The problem here is that you have  
2 essentially three ADW providers within the state of California.  
3 One company, TVG, does not have phone operators. So it was in  
4 their -- their interest as to seek competitive advantage  
5 against the other two who had live phone operators to enter  
6 into an agreement about subcontracting --

7 CHAIR BRACKPOOL: Right.

8 VICE CHAIR ISRAEL: Yeah.

9 MR. GRESSETT: -- because they were never going to do  
10 that.

11 COMMISSIONER CHOPER: That's very revealing.

12 That's --

13 CHAIR BRACKPOOL: Right.

14 COMMISSIONER CHOPER: Thank you very much.

15 CHAIR BRACKPOOL: Right.

16 VICE CHAIR ISRAEL: Right.

17 MR. GRESSETT: Well, XpressBet has went and  
18 contracted with our employers [sic] --

19 VICE CHAIR ISRAEL: Employees.

20 MR. GRESSETT: -- for telephone wagering. When you  
21 call Oregon or whatever, someone says DelMarBets or they say  
22 OakTreeBets. That's why we filed a grievance for the  
23 subcontracting. Well, XpressBet is going to various employers  
24 throughout the state and saying, hey, you don't have to  
25 introduce new technology or anything. We'll do it for you.

1 We'll do it on the cheap because we're operating outside the  
2 State of California.

3           We filed the grievance because the contract language  
4 was established by Sam Kagel back in the '60s when technology  
5 became an issue, they set forth an issue. So we filed -- we  
6 filed a grievance over that, hey, you've could have done this  
7 yourself, you chose to subcontract to evade the contract and  
8 that's why we're here.

9           What TVG would essentially say is, hey, deny  
10 XpressBet, that will leave the market open to us. TwinSpires  
11 rightly says they're not running around to our various  
12 employers and saying, hey, we'll do the work for you. So he  
13 has a legitimate argument. So I'm not sure why he doesn't want  
14 to sign it because none of the people he's doing business are  
15 signatures. XpressBet, on the other hand, which is owned by a  
16 signatory, the contract, is going around and undercutting our  
17 job jurisdiction. And that's why --

18           CHAIR BRACKPOOL: He may be -- he may be trying to do  
19 the same thing, he just hasn't been successful yet.

20           MR. GRESSETT: Yes, he may be --

21           CHAIR BRACKPOOL: Right.

22           MR. GRESSETT: -- and that's why we're acting.

23           CHAIR BRACKPOOL: Right.

24           MR. GRESSETT: So when you want to vote on the narrow  
25 you're going to give competitive advantage. Obviously

1 XpressBet wants to continue to undercut our agreement and we  
2 want to put a stop for it.

3 VICE CHAIR ISRAEL: Well --

4 MR. GRESSETT: And we have --

5 VICE CHAIR ISRAEL: -- can I --

6 CHAIR BRACKPOOL: Let's --

7 MR. GRESSETT: -- through the --

8 VICE CHAIR ISRAEL: Can I ask you a question?

9 TwinSpires bought and absorbed YouBet. Were there any YouBet  
10 jobs under your jurisdiction?

11 MR. GRESSETT: We had a YouBet agreement long enough  
12 for YouBet to be approved a license to operate in the State of  
13 California, and then they completely forgot us.

14 VICE CHAIR ISRAEL: That didn't answer my question.  
15 Were there any jobs?

16 MR. GRESSETT: We -- we had one job where a person  
17 sort of went and showed them how an operation would work. They  
18 entered into an agreement for telephone operations. They  
19 weren't going to -- they weren't even going to be --

20 VICE CHAIR ISRAEL: So they didn't take the telephone  
21 bets? Okay.

22 MR. GRESSETT: It was for customer service type --

23 VICE CHAIR ISRAEL: So they -- they operated the same  
24 way as TVG did.

25 CHAIR BRACKPOOL: Yeah. Computer.

1 VICE CHAIR ISRAEL: Yeah. But TVG has operators  
2 but --

3 COMMISSIONER CHOPER: You have a --

4 VICE CHAIR ISRAEL: -- but to -- not that they take  
5 bets.

6 COMMISSIONER CHOPER: -- collective bargaining  
7 agreement which you feel has been violated by what's been going  
8 on; is that correct?

9 MR. GRESSETT: We feel a signatory to the collective  
10 bargaining agreement through its subsidiary is undercutting our  
11 job jurisdiction.

12 VICE CHAIR ISRAEL: Even though --

13 COMMISSIONER CHOPER: And that's what this -- that's  
14 what this controversy is all about.

15 MR. GRESSETT: And we believe when ADW was  
16 established back in 2001 there were certain assurances that  
17 jobs were going to be created. The legislators -- companies  
18 went to the legislature and said, hey, we're going to create  
19 jobs for the residents of California.

20 Is it any different than an auto manufacturer that  
21 goes to Alabama and says, hey, give us a tax break? You don't  
22 see that manufacturer then go to Alabama and bring residents  
23 from oversea to do those jobs.

24 When the legislatures approved ADW it wasn't for the  
25 intent that jobs be created in Oregon or be created in

1 Pennsylvania. It was the jobs would be created in California.

2 COMMISSIONER CHOPER: Can I -- you're arguing all of  
3 that in your grievance proceeding; is that right?

4 MR. GRESSETT: We're arbitrating under the new  
5 technology agreement in our contract. That -- that --

6 COMMISSIONER CHOPER: Those arguments fall --

7 MR. GRESSETT: Those arguments.

8 COMMISSIONER CHOPER: -- they fall under that.

9 MR. GRESSETT: We -- we can't argue that. We argue  
10 before you that because you're -- you're supposed to not only  
11 protect the interest of the horses, of the participants but of  
12 the workers. So we argue before you that one of the  
13 participants is trying to take advantage of the working people.

14 COMMISSIONER CHOPER: What are you not -- what are  
15 you arguing to us that you're not arguing in your grievance  
16 procedure?

17 MR. GRESSETT: We're not arguing about -- we're  
18 arguing that the subcontract, those jobs were subcontracted  
19 belong to Local 280 members, that those telephone operators  
20 jobs -- when that person answers the phone, DelMarBets or  
21 OakTreeBets, that that person is located in the State of  
22 California.

23 COMMISSIONER CHOPER: I understand that.

24 MR. GRESSETT: Not that he's located in Oregon or  
25 Pennsylvania.

1           COMMISSIONER CHOPER: If you win your grievance,  
2 right, doesn't that take care of the problem that we've all  
3 been talking about?

4           MR. GRESSETT: Well --

5           COMMISSIONER CHOPER: I'm just asking.

6           MR. GRESSETT: -- maybe yes, maybe no. If you -- if  
7 you grant them the license then they're going to say we have a  
8 license to operate, whatever. I mean --

9           COMMISSIONER CHOPER: No, wait a minute. If we grant  
10 a license, just say if, right, why does that interfere with  
11 your grievance procedure?

12          MR. GRESSETT: Because we may or not be awarded  
13 money. Those --

14          COMMISSIONER CHOPER: I understand.

15          MR. GRESSETT: What would happened was those people  
16 who have signed up through DelMarBets may just automatically --  
17 are flipped into XpressBet or TwinSpire.

18          COMMISSIONER CHOPER: I'm sorry. I missed that.

19          MR. GRESSETT: Those people -- look, the agreement as  
20 I understand it now through DelMarBets is that you sign up --  
21 you're essentially signing up for Del Mar but there's some kind  
22 of joint sharing of names or addresses or whatever. And they  
23 get to jointly share in those participants.

24          COMMISSIONER CHOPER: With XpressBet, which is also  
25 owned by --

1 VICE CHAIR ISRAEL: Look -- look --

2 COMMISSIONER CHOPER: -- one of your contracting  
3 parties.

4 VICE CHAIR ISRAEL: Here, let -- let me -- I'll just  
5 explain it plain English. When somebody calls DelMarBets.com  
6 it lights up by the telephone consul as -- to the operator, you  
7 answer this one DelMarBets.com. That same person in the last  
8 call said XpressBet.com. And the same person on the next call  
9 might say OakTreeBet.com.

10 COMMISSIONER CHOPER: No, I got it.

11 VICE CHAIR ISRAEL: Okay?

12 COMMISSIONER CHOPER: I got it.

13 VICE CHAIR ISRAEL: Because none of them reaches a  
14 threshold of needing a new employee.

15 COMMISSIONER CHOPER: No. No. No.

16 VICE CHAIR ISRAEL: And what I'm saying is when you  
17 need new employees they should find a way to make it kick in  
18 and then establish the jobs and find some compromise. Because  
19 this business isn't large enough right now to require the extra  
20 staffing.

21 CHAIR BRACKPOOL: Commissioner Harris.

22 COMMISSIONER HARRIS: As I see it the -- one of the  
23 inherent problems is I don't see any growth in this voice  
24 operator segment anyway. I mean, regardless if it's -- who is  
25 doing it I just don't see it. It's been such a tremendous

1 shift to computer-based things that I think all the parties  
2 would be better off figuring out what he's to take -- take  
3 advantage of more of the technology jobs, and then try to keep  
4 the live operators at the track, maybe try to do more on the  
5 manning clauses at the track.

6 CHAIR BRACKPOOL: All right. Commissioner Choper,  
7 one last question and then I'm going to bring this to a  
8 conclusion.

9 COMMISSIONER CHOPER: I guess all I would say is I  
10 think that your grievance procedure is going to take of this  
11 one way or the other.

12 MR. GRESSETT: Well --

13 COMMISSIONER CHOPER: And it seems to me that, I must  
14 say, that a collective bargaining arbitrator knows a hell of a  
15 lot more about this, with all due deference to my fellow  
16 commissioners, than the Members of this Board.

17 CHAIR BRACKPOOL: And understand how this issue  
18 arose. This issue arose, as I just said a few minutes ago,  
19 because TwinSpires and XpressBet did not provide a labor  
20 agreement. And this was an investigation of why they didn't  
21 provide a labor agreement. So we're not going to say we only  
22 have three choices, because if we take counsel's advice maybe  
23 there will be more. But it seems to me there are three broad  
24 issues -- three broad areas we can make a determination on at  
25 the next meeting.

1           One is that we're going to allow them, you know, not  
2 to have a labor agreement until the grievance matter has  
3 been -- has been heard, or we can say to them, we don't want  
4 you operating without one, so you got to make a deal, or we  
5 going to say to you that there's nothing we can do at this  
6 stage. I mean, those are some of the three areas that we're  
7 in.

8           So this was a discussion. This was not set as -- as  
9 an authorization, approval issue today. It was purely a  
10 discussion issue. I think we're now very familiar with all the  
11 facts. I would just give you the admonition that if you can  
12 carry on talking I think you're all a lot better off. But  
13 thank you for all of your --

14           MR. BLACKWELL: Thank you.

15           MR. CASTRO: Please --

16           CHAIR BRACKPOOL: -- thank you for your time.

17           MR. DARUTY: Thank you.

18           MR. CASTRO: -- can I have one minute? Can I have  
19 one minute?

20           CHAIR BRACKPOOL: What -- we're not going to make any  
21 determination now --

22           MR. CASTRO: I know you're not.

23           CHAIR BRACKPOOL: -- Richard, so --

24           MR. CASTRO: And I'm giving you my commitment that we  
25 will sit down and continue to talk. But it's my understanding

1 that the provision is in statute. And it's my understanding,  
2 and I'd like to hear from your legal counsel --

3 CHAIR BRACKPOOL: You're not going to hear legal  
4 counsel's advice to this Board before we've heard the legal  
5 counsel's advice. So --

6 MR. CASTRO: Well why can't we all hear it together,  
7 whether you have the right --

8 CHAIR BRACKPOOL: Yeah.

9 MR. CASTRO: to change a statute?

10 CHAIR BRACKPOOL: Yeah. Well, why don't we sit in on  
11 all your conference calls with your lawyers the rest of the  
12 time?

13 MR. GRESSETT: You're more than welcome to. I have  
14 no secrets with my lawyers.

15 CHAIR BRACKPOOL: Okay. Thank you very much for the  
16 issue, anyway. Thank you. Okay. I'm going to wrap this up in  
17 two second.

18 Item number 12 -- 11 -- I'm sorry, let me make this  
19 really quick and painless for everybody in Item number 11.

20 EXECUTIVE DIRECTOR BREED: Can I have your attention  
21 please.

22 CHAIR BRACKPOOL: Do not talk until you're out of the  
23 room at the back. Thank you.

24 MR. CASTRO: I understand.

25 CHAIR BRACKPOOL: Item number 11. One of the things

1 we had talked about was getting a more detailed breakdown of  
2 exactly where this takeout dollar goes. We have the lovely pie  
3 chart that Mike always puts together in the annual report. But  
4 this is -- how do we break this down and really get some  
5 detail?

6           You have now provided this Board with that detail.  
7 But it doesn't help the -- the public doesn't have the  
8 breakdown that we've got in here. So I'm not going to use the  
9 public's time to sit here and read so that the six of us ask  
10 you questions about line items that are there.

11           My bigger concern is that we need this level of  
12 detail in the public domain. Because all of these arguments  
13 that come up where people, you know, understandably point  
14 fingers and ask where is fund going, how much is in this fund,  
15 what's happening to it, this is where we need to have a proper  
16 discussion.

17           So what I want to do, and I'm going to work this out  
18 with Kirk and we're going to figure out how to do this, Kirk  
19 and Mike, is I want to figure out how we get a document like  
20 this that is issued by us, we'll have it issued, and say  
21 subsequent to the issuance of that document, maybe 60 days,  
22 we'll then have another agenda item that says here's where we  
23 are and people can stand up and they can intelligently ask the  
24 questions. But I'm not going to spend the public's time today  
25 walking through any of these line items because it just doesn't



TRANSCRIBER'S CERTIFICATE

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I, Martha L. Nelson, attest that the foregoing proceedings were transcribed to the best of my ability.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 25<sup>th</sup> day of February, 2011.

                  /s/ Martha L. Nelson