

MINUTES

OREGON RACING COMMISSION October 19, 2006

The Oregon Racing Commission met on Thursday, October 19, 2006, at 1:30 p.m. in Room 140, 800 NE Oregon Street, Portland, OR. Commissioners in attendance were Vice-Chair Todd Thorne, Commissioners Julianne Davis, Lisa Metcalf and, via telephone, Kerry Johnson. Chair Jeff Gilmour was excused.

Agenda items were discussed in the following order with resulting actions:

1. Approval of September 21, 2006 Minutes

Vice-Chair Thorne provided the following clarification in regards to the action taken at the last meeting on the Joint Horsemen's Committee Hub Fund Revenue Distribution Proposal. He stated: "Before we make a motion on that [September Minutes], I'd like to go back and clarify what it is we did last meeting in regards to purse supplements. What was done was that we had essentially committed to 70% of last years levels. We committed that to purse supplements. I have in front of me here a - Ursula you submitted a payout schedule. As you remember during that discussion we had committed funds. However, when we commit funds like that when we're in a situation where we're depended on seeing how those funds flow in. What we're not going to do is commit to a particular schedule. What I mean by that is - The reason we can't necessarily commit to a schedule is we have a budget, but we don't know exactly if that budget we have is going to flow in according to schedule. So, as you recall, what we said last meeting was that we were going to commit to purse supplements up to and based on availability of funds. We're committed to doing that, but we may not pay it on a monthly basis. As I understand it right now the purse account is in the positive. And, right now, we have one hundred twenty-one plus thousand dollars that we still owe to the purse account which we plan on paying right away. But as far as the schedule, we're not going to necessarily commit to a schedule. We're committing to you that as funds are available we will commit to what we said; 70% of last years appropriations. We have to approach this from a fiduciary standpoint - make sure that because we're on a biennium basis and the biennium ends June of '07. We can not overpay and we've done that in the past and we can't do it this trip."

In addition, Vice Chair Thorne suggested to the Joint Horsemen's Committee that they keep a close watch on the purse accounts and provide monthly reports so that if at some point it looks like an appropriation needs to be made that they can request that appropriation from the Commission and, based on a suitable Hub fund balance, that appropriation could be approved.

⇒ In response to questions regarding the pay out of previously approved appropriations, Carol Morgan, ORC Program and Administrative Coordinator, stated that \$121,000 would be paid out in November and that the check to pay out the \$22,800 that was approved last month had already been requested from Salem.

ACTION: MOTION (Metcalf) Approve the September 21, 2006 Minutes

VOTE: 4 Aye, 0 Nay, 1 Excused

2. Request for Funds for the Drug Testing Cost Increase

Executive Director Hanson stated that the new temporary medication rules that were adopted at the last meeting will require additional testing that is more costly than what had been projected in the budget. She explained that the ORC is statutorily required to do the animal testing and that a new contract had just been entered into with the ORC's testing facility, Truesdail Labs. This contract agreement was prior to the new temporary medication rules and that performing tests based on the new rules will triple the previous

projected cost as more sophisticated equipment is required. She concluded that the ORC now has a deficit of \$96,000 for this budgeted item.

⇒ Executive Director Hanson requested that the Commission allocate \$96,000 from Hub funds to cover the increased medication testing expenses.

⇒ Vice Chair Thorne explained that this request had been figured into the Hub fund cash flow based on what the ORC had already committed to and planned to pay out before the end of the biennium. According to current calculations, there are Hub funds available to cover that cost.

ACTION: MOTION (Davis) Approve the allocation of Hub funds to pay for the \$96,000 medication testing expense increase.

VOTE: 4 Aye, 0 Nay, 1 Excused

At this time the Commission entered into Executive Session and upon their return continued the meeting with the following agenda item.

3. Temporary Medication Rules Amendments

The following is a transcript of this agenda item.

Metcalfe: I have obvious concerns about these rules and the interpretation of these rules. We approved the minutes from last meeting because these rules were supposed to be adopted with the amendments that I had submitted earlier this summer. Apparently a number of people either haven't seen the amendments or the amendments did not go into effect. There are a few things that are in the amendments that I would like to see happen immediately. They can't happen for this weekend because we were not able to convene before now, but they will go into effect at the end of this weekend's race meet to be further discussed on November 16th. The first and most concerning to me is the use of Butte in two-year olds. As many of you who have known me on this Commission for the past few years, I'm fairly verbal on my disagreement that bute should be used in two-year olds. It's my proposition that we go back to our old rules for the time being because that's in the amendment that no two-year old should be raced on bute. The second that I have concern about that's also in the amendments is the penalty for non-administration of medication. Again, we should adopt where we were before the model rules were in effect and go back to our old rules until November 16th. Along these same lines is the three to one ratio that we have nothing in the model rules about the three to one ratio of the use of phenylbutazone. We need to re-adopt that. Finally, and I hope that Portland Meadows is going to address this issue because it concerns our medication rules, is what's happened to the post times since the beginning of the race meet. Obviously, there are many reasons for people to be upset about the non-adherence to the post times and the delay in racing. Of course, that effects our medication rules in that medication has to be given during a very specific time to allow horses to race on that. If a horse is racing and declared on bute and comes up that it's negative for bute, obviously this effects the horsemen in a negative fashion because it's going to come before our Commission as a violation of the rules when, in deed, they were following it. It just happened that they were delayed in their post time and therefore delayed in their testing. I think it's in the best interest of the betting public and the racing individuals as well as the horse that we set some limits on post time. I'm open to discussion on what those limits should be. I understand that because of simulcasting and other race tracks running late that we are trying to make the most money for our state through our racing. At the same time, I lean toward insuring the well being of our horses as well as the integrity of our own Oregon live racing. Was there anything else? Have I left anything - The other thing that was brought up, too, is not part of my amendment, but it would certainly help if the betting public knew the medications under which our non two-year olds were racing. Specifically, which drug they were racing under instead of just that they were racing under medication. That would make our lives a lot easier

and it would also be able to limit our testing, too, which already is three times what it was last year. To me, having \$96,000 devoted to something other than the horsemen, really irks me that we're paying a lab for that. I'd really like to see if we can somehow curtail our medication testing costs and some way look into that. Have I left anything out of what we discussed?

Thorne: I don't think so. I just want to make sure that we understand the situation here. When we adopted the temporary rules last month, we adopted those rules based on that these amendments that you had submitted would be adopted with the rules. My thinking here is that we don't have to take action on adopting amendments again. We adopted them based on your amendments. That's my understanding so technically speaking we didn't facilitate those amendments because nobody saw them. At this point, Portland Meadows and everyone else needs to be aware that those amendments technically are in force by the action we took last month and that they will need to be complied with. That's my approach on that part of it. Does that make sense? Is there any discussion?

Davis: That makes sense to me. That's my understanding of the way the process works.

Metcalf: I think we need to make these amendments public. Even -

Thorne: - That's -

Metcalf: - before the November 16th-

Thorne: -And we could entertain a motion to do that.

Metcalf: Okay.

Thorne: Go ahead.

Morgan: Carol Morgan, I do the filing with the Secretary of State's office and I'm looking at it from that angle as well. I think, just to make sure that we are legally correct with our filing with the Secretary of State, you probably do need to have a motion incorporating this to the temporary rules so I can go ahead and file for that right away with that caveat.

Thorne: Okay.

Hanson: I agree. Thanks.

Thorne: Fair enough. Discussion, Dick, come up.

Cartney: Dick Cartney, Executive Director, Oregon HBPA. Perhaps, I misunderstood at the previous meeting when we adopted these rules. I did not understand that adopting the rules were subject to Commissioner Metcalf's amendments. I thought she wanted those to be considered. Like I said, nobody ever saw them. It's pretty hard to consider them when you don't ever see them. I want to just say one thing. I mean, if you do this, if you go backwards, you're going to do a couple of things. Number one, you're going to defeat the spirit of adopting the rules because the whole idea of the rules was to have uniform medication rules. We have 38 jurisdictions in the United States. Thirty-one or 32 of them have already adopted uniform medication rules. Incidentally, these are rules that were adopted by the ARCI. These were not rules that we put together. There's some things in there that we don't like, but we dealt with them because we wanted to have uniform medication rules. If you go back and change now, and you'll change all these rules, we're far from uniform. Not only that, but you're going to have horsemen - they don't know what to do. They started with a set of rules, now they've been given another set of rules, now you're going to throw another set of rules at them. There's no possible way these people are going to be able to be in conformity. It's a moving target. I strenuously object to changing the rules at this date. I understand these rules are temporary for 180 days at which time they can be made permanent or they can be changed. I would suggest the Commission to stay with the rules that you adopted at the last meeting for the 180 days. If you want to change them at that time. Besides nobody's ever been given a chance for a hearing, have any testimony about what rules should be adopted. It's not even on the agenda. I'm not sure how you can take this action without any prior notice to anybody.

Metcalf: May I -

Thorne: - Go ahead.

Metcalf: -comment on a couple of things. First of all, the model rules that other states have adopted, Dick, are done with amendments. Rarely have they taken them in situ and adopted just those rules. They've adopted them for their own states. And there is, unfortunately, there is not agreement of one set across the board. I think that's a difficult thing for us to do, but I will tell you one thing. As most of us read the Blood Horse that just came out and looked at the summit meeting that was held in Lexington, Kentucky regarding the situation with our race horses. Why our race horses are breaking down more often, are not racing as often, etcetera, etcetera. Although, they looked at a number of things, one of the things they looked at was racing on medication. There, at the end of the summit, and these were some of the big race track trainers, veterinarians, etcetera, in the country, at the end of the summit, what was concluded, according to the Blood Horse, was that we should be racing on zero or low medication. Once again, these medication rules are very, very important and they will continue to change. There is going to be no adoption of the entire United States with a model set of rules. They will always be amended according to that state's commission. Do you want to comment on that first before I go on?

Cartney: Go ahead.

Metcalf: I know that the horsemen are up in arms as what can we give, what can we not give where sanctions will not be approved - so that they will not be sanctioned for things that they do. I know that's very difficult. However, for me, less is more. The racing of horses on bute, I would adopt FBI levels with no medication if it were up to me. This is all in negotiation. Yes, it's difficult, but when we approved last month, I don't think any of us expected every two-year old out there to suddenly start getting bute. I'm not sure where this suddenly took place, but it was like, 'Oh, we can give bute now'. Well, it's very easy to say, 'no, you can not give bute'. I think that they can understand that. It's not stepping backwards. We are still looking to adopt new rules. I don't think we're going backwards at all, it's just this policy is now in effect. Go ahead.

Cartney: I agree with you that the model rules that have been adopted from coast to coast, north to south, east to west in every jurisdiction there is a few very minor tweaks to the system. One size doesn't necessarily fit all. But some of the things your suggesting, no bute in two-years olds, I don't know of any state that doesn't have that. The 30 day ratio rule, I don't know of any state that has that.

Metcalf: The what?

Cartney: The ratio rule, three to one ratio. I don't know of anybody - I've looked everywhere. I don't find it anywhere. You're talking about things, that are in my view, are out of the mainstream. The other thing is, you talk about the study that was done in Kentucky, I would suggest you - I think you're familiar with the Racing Medication & Testing Consortium? Dr. Scot Waterman heads that. It's an arm of the Jockey Club. They have virtually every organization in racing all of the big tracks, veterinarians. These people worked for two or three years to come up with a set of rules that they could conform with so that people have uniform. Is it perfect? No, it's not, but it's pretty darn close. To go in there - and they have, believe me they have a lot of talented people, especially veterinarians. They've looked at all these issues that you've discussed. My suggestion would be, if don't like what's in there, go to the RMTC. Get them to change it based on science. They're not doing this just off the top of their head. They're doing it based on science. As far as two-year olds go, I don't want to argue the point right now because I know where you're at and you know where I'm at. I think you'll look in the racing form and you'll see at the Breeder's Cup next month, [they'll] be two-year old races and I'll guarantee there are million dollar yearlings and they'll all be racing on bute. I think you know that. My deal is, instead of us arguing about who's right and wrong, I think the RMTC is the people that - convince them. If you can convince them, I'll say fine, let's go for it.

Metcalf: Unfortunately, the rules are always going to change. We're always going to have more science. There are always going to be new drugs to test. They are always - It's got to be a dynamic situation. I think you and I are saying the same thing and I think if you look at the amendments to the model

rules that I made, there really are very few. We've tweaked a few rules, the two-year old issue seems to be a major one. That's something that – it's been in effect since, I believe, since I've been on the Commission. It's not that new to the people on the track right now. If we want to have testimony, if that's what happens on November 16th, that's the time to take it up.

Cartney: I agree, if you want to have testimony. But I don't think we should change what we've done so far because now you're going to throw everybody into chaos out there. I think this is not the time to be changing the rules. If you want to debate it on November 16th, or whatever, that's fine for a permanent rule at some point after the 180 days is up. That's fine, because we knew we were going to do that at some point anyway. But to start changing the rules on people now, I think is very unfair. It's your decision, but I would recommend against it. You're right. The model rules are a work in progress. The RMTTC and the ARCI both have said that. They're continuing to do testing at some point in the very near future, Dr. Waterman said they're going to have threshold limits on therapeutic medications. They don't want to come out with anything until they can provide the science. They want to do the research and provide the science. They're not just pulling stuff out of the air. They're going to change. They're going to be modified as we go along and I think we would be wise to look at what they propose and change our rules as we go along.

Metcalfe: Absolutely, you and I are in agreement with that.

Cartney: I think to change the rules now is a real injustice to the horsemen.

Thorne: Thanks, Dick, appreciate it. Is there anybody else in the crowd here that would like to comment on this?

Hanson: I want to make a clarification about the temporary rules and the permanent rule making hearing that's been scheduled for November 16th. The temporary rules are not in effect for 180 days and that was not approved at the last meeting. Commissioner Metcalfe was clear that she didn't want them to be in effect for 180 days. Therefore, we filed for permanent rule making and the hearing is on November 16th. So, whether the amendments - these amendments that are going into effect today or whether the rules are tweaked on the 16th, or whether they stay the same on the 16th, depending on the action that the Commission takes after the hearing at 10:30 on November 16th, the rules obviously are not going to be the same. They are going to change, is what I'm saying, at some level.

Thorne: Any other comments? Just a note; I understand what Dick Cartney is saying and I understand what Commissioner Metcalfe is communicating, but at some point we have to be careful about due process here. I think that this issue, in my mind, because there's some strong interest on both sides of the argument, I don't want to sever the process now because it may become a problem. I'm not sure what the other Commissioners want to do, but I have a hard time fooling around with amending temporary rules at this point just because I think there's some strong opinions on both sides. I just want to make that comment. Any other comments?

Davis: Because I wasn't here at the last Commission meeting, I'm at a little bit of a disadvantage here from knowing exactly what was adopted and what was not adopted. It does seem to me that we should check with our legal counsel to make sure we've appropriately followed all the procedures that we need to and perhaps we could do that in a post haste manner, Ms. Hanson. We can send out - kind of table it and figure out if we've done it correctly and notify people as to the finality.

Thorne: Yeah. Lisa?

Metcalfe: I think that's probably a good idea. I think that written notice needs to be given anyway. In reading the minutes from the last meeting, exactly what the motion was and passed is ambiguous. The only thing that's not ambiguous is my opposition to the 180 days. I think that's a good idea. For this weekend we have no problem. And yes, we may be jumping around a little bit as far as medication rules. If we send out a notice on Monday regarding, especially the bute in two-year olds, we expect that to be upheld through - whether it happens on November 16th or after, if at that time it is changed, then it will be changed again.

Thorne: Go ahead.

Hanson: I just want to make one comment on the due process issue which is so important. That is why we filed these so rapidly for the November 16th hearing was that we wanted to have the due process on the temporary rules to make any tweaks or amendments at that time and hear testimony. And so –

Johnson: - Excuse me, Todd.

Hanson: - I just wanted to make that comment-

Johnson: - I can't hear anything right now. Could they repeat that?

Hanson: Kerry, can you hear me now? I was just making a comment about the due process. We made sure that we filed for permanent rule making on the temporary rules just as soon as we could, which was November 16th, so that due process could occur and testimony could be taken on the temporary rules and at that time possible amendments added and considered by the Commission.

Johnson: Okay.

Thorne: Any other comments? Sounds like we're going to table this until we can go through the permanent rule making process.

This agenda item was revisited later during the course of this meeting. For purposes of clarity, the following is a transcript of that continued discussion:

Metcalf: At one point we were going to call and see if we were following due process. And then you had just said we were going to table it until November 16th. So, we're going to table this to November 16th or we're going to-

Thorne: We're going to deal with it November 16th. I think that – we've essentially approved temporary rules.

Metcalf: That are ambiguous because no one's seen the temporary rules.

Thorne: Okay, nobody's seen the temporary rules.

Metcalf: With the amendments.

Thorne: The problem is we haven't approved, as I understand it, all we did was just adopt temporary rules. And those rules –

Metcalf: - All we did was adopt the model rules.

Thorne: Correct. We can't go into, from a process stand point, we can't go into changing rules without going through the rule changing process. That's the problem. We try to do that without providing public notice and without providing the hearing's process, we probably can't legally do that. What we've done is we adopted temporary rules and we filed for the rule making process on medication and we have to follow that process. Statutorily we have no option, as I see it. Unless, somebody else sees it differently.

Metcalf: We don't want to talk to our attorney about that?

Thorne: We certainly can.

Metcalf: Alright.

Thorne: We can talk to our attorney about what we can legally do, but when we adopt a set of rules, my fear is we can't just go in and change those rules that we've adopted without going through the process of changing the rules, which we have started. We started that process last month. That's my concern. I just don't think statutorily we have the authority to do that.

End of transcript.

4. Portland Meadows Update Report

Jerry Kohls, Racing Secretary, Portland Meadows, was present to answer questions. (Mr. Yuzik was unavailable.) Information and discussions included the following:

- a. There was a good crowd at the track on opening day; they are satisfied with the handle figures and expect significant growth in the next few weeks.
- b. The changeover to the new tote company created some technical difficulties at the start of the meet.
- c. Currently, they have 721 horses on the grounds and anticipate that they'll be full within the next ten days and that the field size would start increasing.
- d. Due to the issue with the post times, a meeting was held with the Stewards to come up with a resolution. The post times will be corrected in the programs so that the state veterinarians and private veterinarians will know when to administer lasix and everyone will know when each race will start.
- e. Regarding the program providing a listing for a horse on bute, banamine or ketoprofene, Portland Meadows will denote that in the program with a "B". This decision was made after reviewing programs from tracks around the country where most tracks only list lasix. However, the Daily Racing Form, which obtains its information from Equibase, denotes a "B" if the horse is on any approved medication, whether it's bute, banamine or ketoprofene. No one differentiates which one it is. Emerald Downs denotes with an "M" if the horse is on approved medication.

5. Sub-Committee Update Reports

Hub Sub-Committee: Vice Chair Todd Thorne stated that a public hearing for Hub rule changes would be held in December.

6. Youbet.com, Inc. On-site Review

Executive Director Hanson explained that two weeks ago, she and Gordon Tallman, Supervisor of Account Wagering Hubs, visited Youbet's Hub facilities in Woodland Hills, California. Mr. Tallman provided the following information:

The purpose of the trip was to begin conducting on-site inspections of the Hub facilities that have a portion of their operations outside the state of Oregon. Mr. Tallman stated that the visit included a review of Youbet's technology, product, the functionality of that product and a discussion on their reporting capabilities. He added that they also had an opportunity to meet with the people that developed the reporting programs and provide them with a regulatory perspective on what specifically needed to be in their reports.

7. OTOBA's Request for a Bonus Authority Review per ORS 462.062(4)

Ursula Gibbons, Executive Director, OTOBA, and Gay Welliver, Vice President, OTOBA, were present to answer questions. Information and discussions included the following:

The OTOBA had been asked by MEC Oregon Racing, Inc. and the Oregon HBPA to sign an agreement where they would relinquish part of the handle designated to them pursuant to ORS 462.062(4). The agreement asks the

OTOBA to relinquish point one percent (.1%) per every five million once the Instant Racing handle reached over \$25,000,000. For example, if the Instant Racing handle exceeded forty-five million, the OTOBA would relinquish two-thirds of their funds to the general purse account.

They had been asked to sign the agreement in September, but the OTOBA Board did not feel comfortable doing so without assurance that they had the authority to do so. Magna Entertainment Corp. was waiting for them to sign the agreement before deploying the Instant Racing machines. They did not feel that they could wait until the next Commission meeting for an answer on whether they had the authority or not.

- ⇒ Dick Cartney, Oregon HBPA, stated for the record that the former Commission Chair, Steve Walters, had previously addressed this issue and had stated that it was his opinion that the OTOBA did have the authority to make that change.
- ⇒ Vice Chair Thorne stated his willingness to approve that authority, however did so with the caveat that Executive Director Hanson would verify the legality of that authority with the Assistant Attorney General.
- ⇒ Executive Director Hanson agreed to contact the AAG's office and notify the OTOBA by next Tuesday.

ACTION: MOTION (Metcalf) Approve the OTOBA's authority to enter into an agreement with Magna Entertainment Corp. and the OHBPA regarding the Instant Racing handle percentage distribution and delegate authority to Executive Director Hanson to consult with the Assistant Attorney General for verification of that authority.

VOTE: 4 Aye, 0 Nay, 1 Excused

8. Confirmation of Next Commission Meeting – November 16, 2006

All Commissioners in attendance stated that they would be present at the next meeting.

9. OQHRA 2006-2007 Fiscal Budget Request

Leah Nelson, Executive Secretary, OQHRA, was present to answer questions. Ms. Nelson stated that there were no significant changes in this year's budget.

- ⇒ Executive Director Hanson recommended approval of the budget.

ACTION: MOTION (Metcalf) Approval of the Oregon Quarter Horse Racing Association's proposed budget for 2006-2007.

VOTE: 4 Aye, 0 Nay, 1 Excused

10. Public Comment

None

There being no further business, the meeting was adjourned.