

# MEETING MINUTES

## OREGON RACING COMMISSION

July 19, 2007

The Oregon Racing Commission met on Thursday, July 19, 2007 in Room 1A, 800 NE Oregon Street, Portland, OR. Commissioners in attendance were Chair Jeff Gilmour, Lisa Metcalf, Kerry Johnson and Julianne Davis. Commissioner Thorne was excused.

### Executive Session

*The commission entered into Executive Session to consider information or records exempt from disclosure pursuant to ORS 192.660(2)(f) and to consult with counsel concerning possible litigation pursuant to ORS 192.660(2)(h).*

### Public Session

**Introduction:** The following is a transcript of the commissioners' opening statements:

Gilmour: It came to my attention that I, as Chair, and members of the Racing Commission, have not gone on to make a public statement regarding what we think and the respect that we have for all of our staff on the Racing Commission. And, I think it's a good time to enter that public comment concerning the work our staff does, whether it's the clerks and stewards, the office staff, the acting director, but most of all, I think we need to spend some quality time in the fact that we have Dr. Schlingman that has done an outstanding job in his work with the commission. Not that there's going to be a change in his status, but it is important, I think, that the Chair of the commission and other members who might want to make some comments, also, that while there are allegations made or charges brought by investigators, veterinarians or other stewards, the commission takes all of those seriously in our investigation to find the truth within all allegations. But, the frivolous allegations or those that come upon investigation as frivolous or are personally expressed to members of our staff are not appreciated because the commission stands behind our staff while we do take the allegations of wrong doings of any nature very seriously. We're hoping that by this public comment that the word gets out that we, as a commission, feel we have excellent staff. They're doing their job of what we expect them to do. Any other comments by members of the commission?

Davis: I have something to say, Chairman.

Gilmour: Commissioner Davis, go right ahead.

Davis: I just wanted to let the public in general know that we really do take these allegations quite seriously whether or not they are allegations of wrong doing or perhaps even someone being unfair or there not being a level playing field. And when those allegations are brought to the commission and they are not well founded and I mean well founded – not just based upon the way you feel or a particular incident, but hard evidence. What ends up happening is that good people have their reputations damaged and that damage can end up being irreparable. It's something that they can't just get back by the commission saying 'Okay we looked into it and they're clear' because the investigations take a tremendous amount of time and a tremendous amount of effort and so in the interim that person's professionalism has been called into question. I mean, just consider it from your own personal perspective. If someone went to your boss and suggested that you hadn't been treating others in the organization fairly or that worse yet, that you may have violated

a law or rule or regulation. Just imagine how that would put a cloud over you and who knows what happens if the person moves on in their profession, goes to another state, takes another job; they're always going to have that cloud following them around. There's always going to be that issue of 'Oh, yeah, but there was that one time where there was that investigation'. So, please remember that when you make allegations against people that report to state public agencies, it's not a small thing. And, I also want to say that we do stand behind the people that support the commission and in particular our veterinarians. They are excellent professionals and that's all I have to say.

Gilmour: Thank you. Anybody else? Dr. Metcalf?

Metcalf: Yes, if I could just add to that. I think that here we are a part of a group or a community or an industry and that if there are instances where we are treating each other unprofessionally, they will come before the commission and it could go against the person who's actually filing the complaint. So, we expect that as a group, we do treat each other professionally and remember that this is - everybody's doing their job.

Gilmour: Any other comments? Hearing none, we'll close that issue.

End Transcript.

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

**1. Hearing on Proposed Amendment to OAR 462-160-0140**

*The commission entered into a hearing on the proposed amendment to OAR 462-160-0140 that will delete the portion of the rule that states charges for laboratory alternate testing shall be borne by the licensee. Upon completion of the hearing, the commission continued the meeting with the following agenda item:*

**2. Presentation of Oral Argument on Exceptions Filed by Attorney for Michael Boag to the ALJ's Proposed Order for Mr. Boag**

Michael Boag, represented by attorney Charlie Williamson, presented oral arguments in support of his exceptions filed last month in response to the commission's Proposed Order issued on May 18, 2007.

**3. June 7, 2007 Minutes**

The June meeting was held in Union, Oregon and Chair Gilmour commented on the amazing improvements Union had made to the fairgrounds by utilizing some of the Hub funds. He stated: "It just goes to show you how valuable we should consider the Hub licensees and the bettors that go through the Hubs, throughout the world, I guess, that comes through Oregon, to see what it can mean to a small community."

ACTION: MOTION (Johnson) Approve minutes as submitted.

VOTE: 4 Aye, 0 Nay, 1 Excused

**4. June 21, 2007 Special Teleconference Meeting Minutes**

ACTION: MOTION (Johnson) Approve minutes as submitted.

VOTE: 4 Aye, 0 Nay, 1 Excused

**5. June 28, 2007 Special Teleconference Meeting Minutes**

ACTION: MOTION (Johnson) Approve minutes as submitted.

VOTE: 4 Aye, 0 Nay, 1 Excused

## 6. Portland Meadows' 2007-2008 Race Meet License Application

The following is a transcript of this agenda item:

- Gilmour: Is there any discussion at this time by members of the commission on their license, which we have been deferring for the last couple meetings. Ms. Davis?
- Davis: Yes. From my personal perspective, I think that there are still a number of open legal issues. We have been in consultation with DOJ and with our counsel. I did have some of my questions answered over the noon hour, but there are still issues surrounding this entire matter that hang over my head with - I guess you'd have to say, with some weight, sort of Damocles up there is a phrase that's used often in constitutional law. And, I just don't feel that I've had appropriate time to fully consider all the legal ramifications with respect to OAR 462-200-0630 and how that impacts one, our consideration of the multi-jurisdictional Hubs – issues; how it effects our granting of license for simulcasting that's coming in from other tracks in which they may be utilizing wagers which don't fit within the legal definition that has been adopted by DOJ, but hasn't been talked about by the Court of Appeals, yet. And, to me, it's a conundrum and creates a situation where careful study has to be made of each and every license that we have already granted. I think we have to re-review everything until these answers get completely sorted out. And, as such, from my perspective and because I don't know if the licenses that we have granted in the past are fully effective or even effective at all, given communications that were received this morning, I can't act on this application one way or another. That's all I have to say.
- Gilmour: So, that's not a motion. Okay. That was a joke, I'm sorry. Bad time for jokes. Dwayne, come on up. For the record, Dwayne, would you identify yourselves and - self. Do you have anybody you want to bring with you, Dwayne, I apologize?
- Yuzik: No. Dwayne Yuzik, Portland Meadows; Chair Gilmour, Commissioners, Gordon, Kelly, good afternoon.
- Gilmour: We have an application by Portland Meadows which is in front of us for a Race Meet License Application. Is it still Portland Meadows' and Magna's decision to ask for this license?
- Yuzik: In its whole part?
- Gilmour: In its whole, as submitted.
- Yuzik: At this particular time, I will say that we are in discussions with horsemen groups in the State of Oregon where the outcome will give guidance and clearance – or guidance to where we're going in the future for all participants and stakeholders. And, hopefully that will be available late next week.
- Gilmour: You raised an interesting point, Dwayne. If you might, little points of clarification; this group that you just spoke of, who is going to apply for – is that a different license?
- Yuzik: No.
- Gilmour: Then it will be an amended license?
- Yuzik: No.
- Gilmour: Okay. So, Portland Meadows, hypothetically, this license that might appear, or request, is coming from a group that hasn't been finalized, yet, will be in the form of

a Portland Meadows race application license.

Yuzik: MEC Oregon Racing will be making – would be the applicant.

Gilmour: Okay. I'm just trying to get some clarifications of who's going to be applying for the license to your knowledge.

Yuzik: MEC Oregon Racing, Inc.

Gilmour: Okay. Okeydokey, is there any questions by other members of the commission?

Davis: I have one question.

Gilmour: Miss Davis, go.

Davis: One question is that: As things are operating right now, Portland Meadows is operating under the license from last year, from 2007 -

Yuzik: - Our current license, correct.

Davis: And as such, you're going forward with the simulcasting in the off season. From my perspective, and I'm not advocating a legal position here, I'm advocating a position as a commissioner, it would seem to me that if Portland Meadows is accepting the benefit of that previous license that it would be doing so on the basis of fulfilling its obligations which would include live racing. I'm not asking you to make a commitment here as to – because you don't have management here with you, but I'm just letting you know that from my perspective, that's what I'm expecting. I guess I didn't really have a question, Chairman.

Gilmour: No, I think you have basically stated everything that was on our mind. And, you did it very well.

Yuzik: MEC Oregon Racing is here to offer live racing. It is our intention and goal to working with our fellow partners to offer live racing at Portland Meadows in the 2007-2008 timeframe.

Gilmour: Ms. Metcalf.

Metcalf: Just so that I have this straight, Dwayne, this application that's going to be filed next week, is the same application that's pending before us.

Yuzik: It will be modified.

Metcalf: It will be a different application?

Yuzik: It will be a different application.

Metcalf: Okay, I just wanted to make that clearer.

Gilmour: Little further comment: It will be an application that basically recognizes the current status of the Oregon commission rules?

Yuzik: Correct.

Gilmour: Okay. Any other comments?

Metcalf: And do you know when this will be filed?

Yuzik: Currently, the body that represents the horsemen's group, the HBPA's at their national convention on the East coast. Hopefully, it's my understanding that they have a board meeting scheduled for Tuesday of next week. The outcome of that should allow us within 48 hours at the conclusion of that, whether we would submit a new application.

Gilmour: Any other questions of Dwayne?

Yuzik: And at that particular time, hopefully, we can take action on it prior to the next scheduled meeting in the form of a special teleconference - would be desirable.

Gilmour: Any other questions of Dwayne? I'd like to ask a member of the horsemen group: Is there any comment that they'd like to make on the Portland Race '07-'08 current application and future possibility? Come on down. Identify yourself for the record, please, and you're invited.

Louden: Bruce Loudon with the HBPA; I'm one of the Directors. Basically, we've had some very preliminary conversations. I'm going to use the word conversations; we've not had any structured meetings. We do hope that we can come to an agreement amongst ourselves and proceed forward. Again, everything that we've done to this point is conversation; we've not come to any firm commitments or agreements and, consequently, we will have that board meeting this Tuesday. We'll have formal discussions on it at that time.

Gilmour: Okay. Any questions of members of the committee? Thank you both very much. While we're on the subject, does anybody else in the audience want to make any comments on the application of the '07-'08 Portland Meadows race application?

Tanory: Dan Tanory –

Gilmour: You've got to sit down, talk into the mic. For the record, identify yourself, please.

Tanory: Dan Tanory, HBPA, Director; I don't think this has been around to any of the directors. I've never heard anything about this. If it's done, it's been under secrecy that wasn't supposed to be done. And, I think if anything is done, it should be before a board meeting of all members of the HBPA, not just the Board of Directors that's here. And, I'll go on record saying I think the horsemen need to be notified.

Gilmour: We do not control your group.

Tanory: No, I'm kind of the black sheep. I'm sorry.

Gilmour: I'm not picking on you personally. I'm just saying that we try to control the Racing Commission and sometimes that's not easy. Okay?

Tanory: This hasn't been brought up to mine - and I'm there every day and nobody said one word about having this - going in with management on what licensing of the race track. That hasn't been brought up.

Gilmour: I'm guessing the next –

Tanory: - It's not supposed to be – we had a little meeting. Mr. Ferguson had a barbeque the day after Fourth of July and he wanted everybody to come to that and just talk about this stuff. And, I told him I didn't think it was very feasible for everybody to have a backside meeting without personnel knowing about it. So, then he sent a letter telling me that they wouldn't discuss anything in the meeting. So, whether they did or whether they didn't, I don't know because I didn't attend the barbeque. But, I don't think it's right for members of the HBPA not knowing anything about this because

we've got a big organization and that's what split the organization in California. They started doing things about their back down there and the TOC [Thoroughbred Owners of California] took over and got'em out of the HBPA and went into the TOC, all of the horsemen, because they got tired of being run around by different stuff. I was present then at the time and I have been present originally. I was on the organization that started this HBPA in Oregon, the first. I was on the directors. Bruce Williams was the president and that's how we organized it. And, like I say, it was for the horsemen from horsemen. That's what the HBPA stands for and we're not doing that. We're not management.

Gilmour: Okeydokey. Any questions? Thank you very much. Okay, going once, going twice, public comment on this license is over for this period of time. Is there a motion on the license application that's currently before us for the '07-'08 race season?

Davis: I would move, Chair Gilmour, that we suspend action on approval or disapproval of this particular application with some severe caveats here. One is that my motion is based upon the representation made here today that there are discussions underway that we will have a new application here in front of the commission that takes the current status of our rules into consideration and provides for live racing. But – so that's my motion is that we defer, but I have to say this to the audience here and that is: There are legal questions that need to be addressed quickly that are beyond this commission and the longer this is drawn out, the more jeopardy you put your industry in because this is beyond what the commission can do. That's my motion.

Gilmour: Okeydokey. Any discussion on the motion?

Metcalf: I've just several comments that I'd like to make about that as well. I think that the commission is looked at by many of the horsemen as the bad guy, as the one who's going to have to make an ultimate decision here. And, I see some of you shaking your heads and yet I'm the one who gets the calls from – if live racing is terminated, it's due to the commission's decision and that couldn't be further from the truth. It is everyone of ours - who sits at this table, it is everyone of ours' goal to continue with live racing. This agreement between Magna and the DOJ, and it's basically the legalities Commissioner Davis points out; the legality of what is pari-mutuel and the definition. And so, this is a disagreement that we basically have to make some rules or we have to be regulatory in the body, we are, but it is not the disagreement that has anything to do with the commission. I almost – I said to my fellow commissioners today, I almost feel like a pawn in all of this. We will take the fall and yet, it really has very little to do with us. And, just so that the audience is aware that we as commissioners, if we do not act the way our counsel has advised us that we open ourselves up to personal liability for which I, personally, neither have the legal expertise nor the financial backing to spend the next fifteen years of my life trying to figure this out. So, our hands are tied up here in many ways. The longer we continue to not make a decision here on this, the less chance we have of having live racing this year, as well as, letting the disagreement between Magna and the DOJ actually enter the court system to be resolved. So, I guess those are my comments there. I hope I haven't overstepped my bounds from the legal counsel here.

Gilmour: Ms. Johnson, anything?

Johnson: No.

Gilmour: Well, before I take the motion for a vote, I would like also to make a couple statements. I have been on the commission and I have tried to my best ability to follow past chair and current legal advice and the actions that we have taken the last couple of months have been based on a conflict between past chair and current legal advice at many times. One of the things that troubles me as the chair: I was on

the commission when we lost the dogs, dog racing in Oregon and we're at another turning point and, hopefully, that will be resolved in some fashion. Without a commercial horse racing license in play or approved this July 19<sup>th</sup>, '07, puts us in a timeframe where so many people are depending upon their future and where it's going, from horsemen, to stable people, to lobbyist to – and most of all to staff because of frankness, and this is not to scare anybody that already doesn't know this, but if we do not have a commercial racing license and a commercial racing meet schedule very soon, there will be pink slips in many people's boxes at the commission office and I'm sure at the stables. So, I don't need to explain to you that, while we're suffering from attorney battling over a particular issue, that we have got to move on and let that take its course in a quick way as possible, if anything moves quick in a court process. But, I will not be sitting here as chair allowing a continuation of a license to go on in absence of a non new approved license. I don't think it's fair that the past license benefits without doing live racing. So, I hope everybody understands exactly where I'm coming from because in the next 30 days I'm going to do what I can to, hopefully, get an application for a live race meet, a commercial license, or I will find every power to discontinue the current '06-'07 license. We need to move on. There is the possibility of others that might be interested in applying for a license. Those are not just rumors. I believe our office was notified today of interest. So, if you're in a situation to get this thing done quickly and present a racing commercial license for Portland Meadows, do it quickly and in a fashion that this commission can, over the phone, approve it. Everything takes time. Now is there any disagreement with the motion that's on the floor? Hearing no opposition, we move on.

#### **7. Sub-Committee Update Reports**

No updates.

#### **8. Grants Pass Race Meet Report**

Bob Blair, ORC Presiding Steward, was present to answer questions. Information and discussions included the following:

a. Starting gate crew caused some issues that will need to be addressed by the commission and legal staff; the stewards have already started dealing with some of the personnel involved. At times, the starting gate crew had forced management into several violations regarding the rule to have one man per horse [OAR 462-140-0130 (29)]; sometimes they had only four assistant starters in an eight horse field.

b. Many incidents caused delays with the races. Some of it was due to equipment; the tractor ran out of gas, the water truck pump broke and it's backup tractor ruptured a hydraulic hose. The human ambulance was in high demand and repeatedly required them to wait until the ambulance was again available before starting the races.

b. Purse handle was up; A handout presented to the commissioners showed the handle last year for 15 days was \$285,795 compared to this year's for 9 days which was \$471,586.

c. The jockey incentive program continues to work quite well; 21 jockeys participated.

#### **9. Crooked River Roundup Race Meet Report - Prineville**

Bob Blair, ORC Presiding Steward, was present to answer questions. Information and discussions included the following:

a. Weather was great and had plenty of horses and riders with 10 jockeys eligible for the jockey incentive program earnings.

b. Three uneventful days, then on the last day, the printing press broke down and the racing forms which usually arrived between 5:30 PM and 6:00 PM for a 7:15 PM post time, did not arrive until about 6:50 PM. This caused a delay starting the first race and raised concern about the midnight rule. The stewards met with Chair Gilmour, but as it turned out, the last race post time was 11:52 PM, the mutuel's machines were locked at 11:57 PM and the race was official at 12:04 AM.

**10. OQHRA Request for Approval to Distribute the Oregon Bred Bonus and Breeder Awards Earned During 2006-2007 Portland Meadows Race Meet**

Jackie Phillips, Chairwoman of the Oregon Quarter Horse Racing Association, was present to answer questions. Information and discussions included the following:

Requested that the commission delegate authority to the Interim Executive Director to authorize the distribution once the numbers were finalized and reconciled. The numbers were expected to be in as early as the next week.

ACTION: MOTION (Metcalf) Delegate authority to the Interim Executive Director to allow the OQHRA to distribute the earnings for the Oregon Bred Bonus and Breeder Awards once the calculations were final.

VOTE: 4 Aye, 0 Nay, 1 Excused

**11. Action on Final Order for Lonnie Davis**

ACTION: MOTION (Davis) Adopt the Proposed Order as the Final Order.

VOTE: 4 Aye, 0 Nay, 1 Excused

**12. Confirmation of Next Commission Meeting – August 16, 2007**

Chair Gilmour indicated that this meeting may be cancelled if the items on the agenda did not require the commission to take immediate action.

**13. Legislative Updates**

Rob Douglas, Lobbyist for the Oregon Thoroughbred and Breeders Association, provided an update on the following:

- a) **Senate Bill 439**, 24 hour medication rule; passed.
- b) **Senate Bill 441**, one-third hub fund money; did not pass. When it moved out of the Senate Committee, it was sent to the Ways and Means Committee where it remained at the end of session.
- c) **Senate Bill 747**, cash voucher; passed.

**14. Executive Director Search Update**

Commissioner Johnson reported that the first round of interviews had been conducted and that the second round of interviews was scheduled for July 30, 2007. She stated that on July 31, 2007, a Special Commission Meeting would be held to provide an opportunity for the industry and staff to meet the final candidates and ask them questions.

⇒ In response to Chair Gilmour's question, Carol Morgan stated that notices would go out for the special meetings and be posted on the website once the final details were known.

**15. Action on Proposed Amendment to OAR 462-160-0140**

ACTION: MOTION (Metcalf) Adopt the proposed amendment that will delete the portion of the rule that states that charges for laboratory alternate testing shall be borne by the licensee.

VOTE: 4 Aye, 0 Nay, 1 Excused

**16. Public Comment**

⇒ Ben Hayes, US Off-Track, introduced Vincent Caldwell from Ireland and two other gentlemen; one from the United Kingdom and one from Scotland, who plan to submit a new Hub application in the next month. This new Hub will focus on the international market.

There being no further business, the meeting was adjourned.