



Minutes

Oregon Racing Commission January 21, 2016

Meeting Detail

The Oregon Racing Commission (ORC) met on Thursday, January 21, 2016, in Room 1C of the Portland State Office Building (PSOB), 800 N.E. Oregon St., Portland, OR.

Call to Order

Chair Charles Williamson called the meeting to order at 1:30 p.m.

In Attendance

Commissioners: Chair Charles Williamson, Vice-Chair Jan Palmer, DVM; Commissioner Christopher Dudley (by telephone); Commissioner Michael Huber, DVM (by telephone)

Staff

Jack McGrail, Executive Director; Raul Ramirez, Assistant Attorney General

Excused

Commissioner Angel Baez

AGENDA ITEMS

Approvals:

January 21, 2016, Meeting Agenda

Action: Motion to approve the January 21, 2016, meeting agenda.

Moved by: Commissioner Michael Huber, DVM

Seconded: Commissioner Christopher Dudley

Vote: Chair Williamson took roll and the results were unanimous with 4 Ayes, 0 Nays.

November 19, 2015, Meeting Minutes

Action: Motion to approve the November 19, 2015, Commission Meeting Minutes as submitted.

Moved by: Commissioner Michael Huber, DVM

Seconded: Commissioner Christopher Dudley

Vote: Chair Williamson took roll and the results were unanimous with 4 Ayes, 0 Nays.

Old Business:

Sub-Committee Update Reports:

a. Advanced Deposit Wagering (ADW) and Multi-Jurisdictional Hubs

Chair Charles Williamson appointed Commissioner Christopher Dudley to take over the position as chair of the ADW and Multi-Jurisdictional Hubs sub-committee. No vote was required.

b. Best Practices

No report.

c. Budget and Hub Funds

No report.

d. Medication and Horse Welfare

No report.

e. Executive Director's Report

Executive Director Jack McGrail reported that despite record-breaking rain in December and trending that way in January, Portland Meadows (PM) had done a good job of keeping the track in good condition. He also thanked the horsemen for persevering in difficult circumstances. Races were cancelled January 4 and 5 because of the frozen track and inconsistency in the surface as it thawed, creating a potentially dangerous situation. Director McGrail noted PM had its first million-dollar handle days of the meet on January 11 and 12. He stated horsemen and PM officials have begun to discuss scheduling for 2016-17 racing, he said.

The annual Oregon Fairs Association Race Committee meeting was held Saturday in Salem. The Future of Racing in Oregon Group (FROG) had a summer race meet review committee, chaired by Randy Evers of the Oregon Horsemen's Benevolent and Protective Association (OHBPA). The committee presented a list of recommendations that included increasing handle, calling for a more rigorous pre-meet inspection of facilities, amending the jockey incentive program to attract riders, increasing purses, and containing the rising cost of jockey insurance. The ORC will be working closely with the fairs to implement some of the suggested changes.

Director McGrail stated that statistics showed the betting handle nationwide increased in 2015 for the first time since 2012. He noted that purses, wagering per race and per race starters all were up nationally in 2015. Director McGrail stated that beginning with the 2017 foal crop, registration with the Jockey Club will require microchipping.

Regarding the October outbreak of Equine Infectious Anemia near the start of the PM meet, Director McGrail stated that the Department of Agriculture tested 60 horses and all were found to be negative for EIA. He stated that discussion needed to continue between the horsemen and PM about the Coggins policy.

Director McGrail concluded his report by thanking Commissioner Dudley for his service in the role of Commission Chair.

f. Future of Racing in Oregon Group (FROG) update

Vice-Chair Jan Palmer, DVM, reported that FROG met twice, including during the fairs association meeting, which Director McGrail had summarized. Topics of discussion have included increasing marketing, and a marketing subcommittee has been formed composed of Lynnelle Smith of the Oregon Thoroughbred Owners and Breeders Association (OTOBA), Karsten Hennze of Portland Meadows and Roger Nyquist of TVG. Ideas generated by the committee include hiring a part-time person to work on improving social media advertising for PM and the fairs.

g. Portland Meadows Report

General Manager Karsten Hennze reported that Portland Meadows' (PM) total handle, compared to last year, was up 18%, with export handle up by \$3 million, or 22%. On-track handle is down roughly 32%, which was expected because of the Monday/Tuesday race schedule. Average runners per race is trending a little lower than last year. There have been 29 days of racing, three days were cancelled, and 6 days are left in the season. A few individual races were cancelled, on November 30 because of track thawing and on December 8, when heavy rains caused a light breaker to short out.

Mr. Hennze reported there had been significant jockey injuries – those causing riders to miss several days of racing – including a concussion, a broken scapula and cracked ribs. There have been five catastrophic equine injuries, a significant increase from last year. He said rain and freezing conditions contributed to issues with the track, particularly on November 30, when two occurred. The last two races were cancelled that day because of uneven thawing. Other incidents included a horse collapsing in the stretch, an incident on December 22 and one this month in the first furlong of a race.

Chair Williamson asked if the horses had been necropsied, and Commissioner Huber answered that they had been.

Mr. Hennze stated that PM's two recently approved OTBs were open in Tillamook and Salem. He reported the owner of the Salem venue wants to sell the business, and the new owner may not want to run the OTB. PM currently has 10 OTBs.

Oregon Championship Day saw 47 starters vs. 44 last year, with five-horse fields and one more race than last year. Handle was \$558,000, up 25% from last year, although on-track was down 21%. The event and day were well received.

Mr. Hennze reported that PM is running the National Racing Club's Pick 6 with a \$100,000 guarantee on the Rainbow 6 Jackpot wager. Races are running late in the day on Mondays, for a total of 15 races, but it's working well logistically. Handle on those races is \$20,000 to \$24,000 – not a significant amount – about \$300,000 to \$400,000 on the six races. The wager gets better the longer it carries over, he said, and the closer it gets to a "force out" day.

Mr. Hennze stated that Historical Horse Racing, formerly known as Instant Racing, is open with 51 machines. PM had planned to open the whole floor in mid-February, but game-development issues have pushed that back to a targeted March 1 soft opening, dependent on game approvals to be submitted to Director McGrail, with a grand opening March 11.

Chair Williamson asked if the new games were significantly better, and Mr. Hennze reported that although he had not seen them in action, he believed they would be.

Mr. Hennze stated that PM and the OHBPA have scheduled their first 2016-17 race meet contract meeting. He hopes to have news before the end of the current meet.

Mr. Hennze stated that he had met this morning with representatives of the City of Portland, which has placed a zoning overlay on industrial lands including Portland Meadows. PM's large event/outdoor entertainment conditional-use permit may turn into a non-conforming use. Essentially, PM would be grandfathered in for its existing use. But lands identified by the city as "industrial" will become industrial should they stop operating their existing use.

Chair Williamson asked what would happen if the land were sold. Mr. Hennze reported that he thought if the existing use continued, it would be allowed to be used that way. Chair Williamson stated this needs to be determined. Mr. Hennze stated that currently the track would become a non-conforming grandfathered use, and discussions are being held about whether it can become a conditional use, which is the current designation. The property currently is partly commercial, partly industrial; it is not agricultural. Chair Williamson stated that he thought non-conforming use lapses if the property is sold.

Mr. Hennze stated that the city contended there was not much difference between a conditional use and a non-conforming use. He reported the change stems from a state-driven effort to allocate a certain number of acres and large chunks of land.

Chair Williamson expressed his concern about whether selling the land in the future would result in the conditional use going away. He stated that the Commission would want to help PM with the city. Mr. Hennze reported the plan will come before the City Council in the fall, and now is the time to talk to planners and stakeholders. Director McGrail noted that the Stronach Group's counsel in Los Angeles, Scott Daruty, has been in touch with the ORC regarding this matter.

New Business:

Discussion and Possible Reinstatement of Licensee (James Wooten):

Assistant Attorney General Raul Ramirez advised the Commission that it might consider this matter under Executive Session, and the Commission decided to do so, citing OAR 192-660(2)(f).

Discussion and Possible Approval to Amend Rule 462-220-0080(1)(2) per Legislative Action:

Chair Williamson stated that the proposed amendment to OAR 462-220-0080(1)(2) changes the payment structure to conform with the amended statute to allow the agency to retain 75% of pari-mutuel receipts and requires 25% of these receipts to be transferred to the general fund. There was no support or opposition for the amendment at the public rule hearing earlier today.

Action: Approve proposed amendment to OAR 462-220-0080(1)(2) to conform with amended statute that changes payment structure between agency and general fund. Directs agency to retain 75% for the industry and transfer 25% to the general fund of pari-mutuel receipts.

Moved by: Vice-Chair Jan Palmer, DVM

Seconded: Commissioner Christopher Dudley

Vote: Chair Charles Williamson took roll; results were unanimous with 4 Ayes, 0 Nays.

Discussion and Possible Approval of 2016 Summer Race Dates:

Director McGrail stated that all the fairs had submitted Form A of the Summer Race Meet application requesting race dates, which largely aligned with last year's dates. The horsemen and Commission had sought a gap between the Grants Pass and Prineville meets, but that was not possible for 2016. Requested race meet dates are:

- Union (Eastern Oregon Livestock Show): June 10, 11, 12
- Grants Pass (Southern Oregon Horse Racing Association): June 18, 19, 25, 26; July 2, 3, 4, 9, 10
- Prineville (Crooked River Roundup): July 13, 14, 15, 16 (night racing)
- Tillamook County Fair: August 10, 11, 12, 13
- Harney County Fair: September 9, 10, 11

Chair Williamson asked about the status of discussions regarding combining or eliminating race dates to help with the cost of jockey insurance. Director McGrail stated that those discussions led to the conclusion that reducing race days would not save money.

Vice-Chair Palmer asked if the meets wanted to make changes – such as offering \$3 bets instead of \$2 bets or \$2 bets instead of \$3 – would they be able to do so once Form A is approved? Director McGrail stated that the meets could file an amended Form A. He clarified that by approving Form A, the Commission was approving dates only; Forms B and C are due by March. He added that Form A does include the requested bets – i.e., \$2 or \$3 bets – but he considered that to be one of the less important aspects of regulating the fair meets. Commissioner Huber (on phone) asked Commission members to verify that Form A for all meets were in hand, and they did.

Action: Approve 2016 fair meet date schedule as presented by the Executive Director.

Moved by: Commissioner Michael Huber, DVM

Seconded: Commissioner Chris Dudley

Vote: Chair Charles Williamson took roll; results were unanimous with 4 Ayes, 0 Nays.

Discussion and Possible Appointment of Deputy Steward:

Director McGrail stated that a several month recruitment drew an extraordinarily well qualified group of candidates, among whom Jim Smith stood out. Director McGrail particularly cited Mr. Smith's knowledge of Oregon racing. The position will be filled as a 9-month appointment, beginning June 1. Mr. Smith will continue in his current, per-diem, role until the end of this meet.

Action: Approve appointment of Jim Smith as Deputy Steward.

Discussion: Commissioner Huber asked if the appointment included a probationary period. Director McGrail stated that it did not, the Deputy Steward serves at will. Nor is it represented by a union, Director McGrail responded to a further question by Commissioner Huber.

Moved by: Vice-Chair Jan Palmer, DVM

Seconded: Commissioner Chris Dudley

Vote: Chair Charles Williamson took roll; results were unanimous with 4 Ayes, 0 Nays.

Contested Cases:

None

Other Business As May Properly Come Before the Commission:

None

Public Comment:

Dave Nelson of the Oregon Quarter Horse Racing Association (OQHRA), Karsten Hennze of PM and Sheri Morin of the Southern Oregon Horse Racing Association (SOHRA) addressed the Commission regarding the use of clenbuterol in Quarter Horse racing. Mr. Nelson reported to the Commission that the American Quarter Horse Association (AQHA) has banned the use of clenbuterol in its Challenge races, which feature more than \$1 million in purses, and has established a phase-down for the use of clenbuterol in all stakes races over the next couple of years. Research at Grants Pass showed nearly 40% of the horses in the 2015 Firecracker Futurity tested positive in hair tests for clenbuterol. Mr. Nelson stated that clenbuterol is a good medication that disappears from the horse's system in about three days, but it has a strong anabolic effect that lasts 15 to 17 days. A cooperative program done with PM during the current meet found that several winners with clean blood and urine tests were positive for clenbuterol in hair tests done at the University of California lab.

The OQHRA is proposing zero tolerance for Quarter Horses racing in Oregon for clenbuterol, albuterol, zopavirrol and palin. The AQHA has a process for people who want to use clenbuterol to treat a respiratory problem in which they present a hair test, or equally definitive test, to a racing jurisdiction to show the drug is out of the horse's system. Mr. Nelson stated that the OQHRA, PM and SOHRA are asking the Commission to begin the rule-making process to amend the current rule that allows 2 picograms of clenbuterol to be reduced to zero.

Mr. Hennze expressed PM's support for the initiative and for controlling what is a well-known performance enhancer. Ms. Morin stated that a zero tolerance rule would level the playing field. She stated that people who are not enhancing their horses' racing performance are less likely to race if others are. A zero tolerance policy is one more way to address declining horse numbers and bring in new horses, owners, trainers and breeders.

Chair Williamson stated that Mr. Nelson had presented the Commission with a proposed amendment to OAR 462-160-0130, which Chair Williamson proposed referring to the Medication and Horse Welfare sub-committee. Mr. Nelson reported that in light of changes to rule-making timelines and state requirements, supporters of the amendment would like to have the process begin now, in hopes that the rule amendment could be in effect by the start of the Union meet, or Grants Pass at the latest. By Grants Pass, the supporters might be requesting an emergency rule or a ground rule for the race meet. He added that the OQHRA has written a zero tolerance into all its stakes application forms, the contracts between the OQHRA and the nominator as to conditions races will be run under, specifying that horses will be hair tested in all stakes races and overnight handicaps at PM, Prineville and Grants Pass. Mr. Nelson noted that in California (Los Alamitos Race Course), races are seeing closer finishes, horses are lasting longer and trainers are happier knowing they're competing on the ability of their horse and their training ability rather than "what's coming out of the drugstore."

Commissioner Huber stated that he appreciated the effort of the group, the medication sub-committee and Commission. Without background and support, it's difficult to manage these issues, he added, but in this case, the Commission has that background in the form of positive hair-tests and three groups (OQHRA, PM and SOHRA) asking for changes for the good of the industry in Oregon. Having these components makes it easier to draft ideas to approach a zero tolerance policy. Commissioner Huber stated that this issue would be on the agenda at next month's sub-committee meeting.

Director McGrail asked if the intent of the amendment was to apply only to Quarter Horses. Mr. Nelson stated that was the intent, but when he wrote the proposed amendment, he inadvertently deleted the existing clenbuterol rule for all horses, which specified a 2-picogram limit, which would affect the rule

for Thoroughbreds, and that was not his intent. Chair Williamson stated that the sub-committee was welcome to study all horses, if it so desired.

Director McGrail inquired whether the supporters had an idea about how to fund testing. Mr. Nelson stated that at Grants Pass, the OQHRA paid for the cost of testing at UC-Davis (\$250 per test); at Portland Meadows, the Quarter Horse group and track management divided the cost equally. He hoped if the ORC adopted a rule, the Commission would assume responsibility. If not, supporters would look at options, including using hub funds.

Vice-Chair Palmer asked if the testing done this year had resulted in fines or suspensions, or if the owners or trainers had received the results. Mr. Hennze stated that at PM, no one has been notified, but he was working with stewards come up with a process to advise trainers and owners of the research test findings. He is hoping to look at vet records, which may show viable therapeutic uses, and if not, the conversations would be continued with the horsemen.

Commissioner Huber stated that at Grants Pass all the tests were randomized with no names attached to the samples. Mr. Nelson confirmed that.

Chair Williamson said a stakeholders meeting should be organized as soon as possible in an effort to address the issue before the fair meets.

In response to a question from Vice-Chair Palmer, Director McGrail stated that the Racing Medication and Testing Consortium (RMTTC) guidelines for clenbuterol were 140 picograms. Mr. Nelson added that was 140 picograms with a 14-day withdrawal, explaining that the drug clears the system in about 52 hours, making it undetectable by standard methodology, but retains an anabolic effect.

Sam Dronen, owner, trainer, breeder and member of the OTOBA, wished to address the Commission regarding the “fiasco” associated with testing at the beginning of the PM meet. Mr. Dronen has a case pending before the stewards, and Counsel Ramirez cautioned Mr. Dronen and the Commission that they needed to be careful and aware of what was allowed in public comment. Chair Williamson advised Mr. Dronen that the Commission would not hear testimony directly related to his case, but he was welcome to comment on anything related to Commission policy.

Mr. Dronen noted that 100 picograms was the limit for many therapeutic medications, for instance, depo medrol/cortisone. The low picogram level, he stated, was causing problems for horsemen looking to purchase horses from bordering states because of differing standards in withdrawal times. The Commission’s job, he stated, is to set guidelines and rules that help horsemen. Chair Williamson concurred. Last spring, Mr. Dronen stated, in the absence of guidelines, he and another 15 to 20 people received “bad tests.” Mr. Dronen stated he felt the Commission had set up the horsemen and let them fail. He reported that he understood he had to give up a purse because of statute, but someone should come up with the money for the purse, and that someone should be the state. He stated that Commissioners had not handled their jobs as they should have. Mr. Dronen added that as an owner and trainer – and speaking for others – he was soured by this. He stated that the Commission is risking losing Oregon racing if it does not rectify the matter.

Director McGrail stated that it was not appropriate for him to address Mr. Dronen’s comments and a letter is pending, but the fact was there were no threshold changes this year from any year before. Chair Williamson assured Mr. Dronen the Commission does care and is trying to do everything it can.

Executive Session:

The Commission went into Executive Session at 2:31 p.m. pursuant to ORS 192.660(2)(f) to discuss the application to reinstate James Wooten. It emerged from Executive Session at 2:50 p.m.

Discussion and Possible Reinstatement of Licensee (James Wooten):

Action: James Wooten be reinstated. He will receive a Jockey License, with the conditions that he can be tested at any time, for cause or without cause, for all drugs, including alcohol, marijuana and any other controlled substances. If Mr. Wooten tests above the legal thresholds for any substance, his license will be revoked. It is up to the Commission to determine the length of the revocation and when he could reapply.

Moved by: Vice Chair Jan Palmer, DVM

Seconded: Commissioner Michael Huber, DVM

Vote: Chair Williamson took roll; the results were unanimous with 4 Ayes and 0 Nays.

Confirmation of the Next Commission Meeting:

The next ORC meeting will be at 1:30 p.m. Thursday, February 18, 2016, in Room 1C of the Portland State Office Building, 800 N.E. Oregon St., Portland, OR. No vote was taken.

Adjournment:

There being no further business, the meeting was adjourned at 2:53 p.m.

Action: Motion to adjourn.

Moved by: Vice Chair Jan Palmer, DVM

Seconded: Commissioner Michael Huber, DVM

Vote: Chair Williamson took roll; results were unanimous with 4 Ayes, 0 Nays.