



Minutes
Oregon Racing Commission
July 19, 2017

Meeting Detail

The Oregon Racing Commission (ORC) met on Wednesday, July 19, 2017, 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 Diego Conde; Commissioner Michael Huber, DVM (by phone); Commissioner Christopher Dudley (by phone).

Staff

Executive Director Jack McGrail, Catriona McCracken, Assistant Attorney General (AAG).

Agenda Items

Approvals:

Action: Approval of the meeting agenda.

Moved by: Commissioner Christopher Dudley

Seconded: Commissioner Diego Conde

Vote: Commissioners Williamson, Palmer, Conde, Dudley and Huber voted AYE, and the motion carried unanimously (5:0).

Action: Approval of the June 15, 2017, meeting minutes.

Moved by: Commissioner Diego Conde

Seconded: Vice Chair Jan Palmer, DVM

Vote: Commissioners Williamson, Palmer, Conde, Dudley and Huber voted AYE, and the motion carried unanimously (5:0).

Old Business:

Medication and Horse Welfare Sub-committee report

Commissioner Diego Conde reported that the sub-committee met this morning and discussed three topics: uniform application of clenbuterol rules for Thoroughbreds and Quarter Horses; racing on back-to-back days; and analyzing breakdown data.

Commissioner Conde noted that although the sub-committee had the “noble intention” of making rules regarding clenbuterol uniform for Thoroughbreds and Quarter Horses, doing so would place Oregon outside national policy, which has different rules for each breed. Therefore, the sub-committee is suspending its discussions on clenbuterol for the time being.

In response to a question, Deputy State Steward Jim Smith reported that a Thoroughbred starting in what would be considered a traditional Quarter Horse race is subject to the same testing as Quarter Horses.

Regarding horses running on consecutive days, Commissioner Conde stated the subcommittee had concerns regarding welfare of horses and jockeys and medication compliance. The sub-committee asked Executive Director Jack McGrail to contact stakeholders and solicit their thoughts as discussions begin about a rule to prevent horses from being entered in races on back-to-back days.

Lastly, Commissioner Conde reported that the subcommittee discussed what to do with the breakdown data it has gathered. Commissioner Michael Huber will put together a proposal for presentation to the Budget Sub-committee detailing costs and specifics about how to analyze the data.

Chair Charles Williamson wondered whether toe-grabs were a factor in breakdowns and whether the analysis would include that factor. Commissioner Huber stated that toe-grab length did not seem to have any correlation to breakdowns.

Best Practices report

Commissioner Christopher Dudley reminded the Commissioners that they had received an email dated July 7 that included Best Practices scoring and criteria documents, as well as a background memo outlining actions the Commission had taken in the past year related to the criteria. The scoring documents are to be returned to the ORC office by July 31.

Executive Director's report

Executive Director Jack McGrail reported that the Grants Pass Downs race meet had been highly successful. Overall handle was up because of the addition of ADW handle through IdaBet. There were some transmission issues with the video signal, he noted, adding that growing pains were inevitable in the first year of the IdaBet effort. Handle was \$425,846 this year, with a daily average of \$47,316, compared to 2016's handle of \$380,819. On-track handle was down by a total of \$37,356, which Director McGrail attributed to a steep drop in attendance on the second weekend of the meet, when temperatures reached 106 degrees. On-track handle that weekend was about 56 percent what it was last year.

Director McGrail noted that the Southern Oregon Horse Racing Association does an outstanding job of promotions, publicity and involving the community in sponsorships to increase purses. He commended Director of Racing Rod Lowe and his staff on the track condition and noted that track crew, ORC staff and the horsemen took additional, safety-related steps during the extreme heat.

He noted that the electronic timer did not work during trials for the Firecracker Futurity, and stewards had to hand-time the races. They used three clockers and followed American Quarter Horse Association (AQHA) protocols for when electronic timers fail. There were no issues with the starting gate, he stated.

Director McGrail stated that the Prineville race meet kicked off with a huge crowd July 12, and that momentum continued throughout the meet. Handle was up -- \$286,363, compared with \$273,613 last year – with average daily handle of \$71,600, which is a lot for a fair meet, he noted. The meet enjoys a lot of community support, evidenced by the crowds, handle and purses. The lowest purse was \$3,200, and the AQHA Bonus Challenge purse was \$17,020. He added that owners and trainers noticed and appreciated the increase in purses from a bottom of \$2,500 to \$3,200.

He noted that United Tote's tote board was more suited to day racing than night racing and was hard to see in the dark. Floodlights were added after the first night, and that helped, but next year the company needs a board specifically made for night racing, he stated.

Overall at the fairs, the availability of jockeys continues to be a problem, Director McGrail noted, adding that the Future of Racing in Oregon Group (FROG) discussed that topic this morning. There were no catastrophic injuries, he added, and jockey injuries were minimal: one injured a shoulder in the paddock and another was taken to the hospital and released soon after. Director McGrail summed up that all three meets so far – Union, Grants Pass and Prineville – had gone well.

Future of Racing in Oregon Group (FROG) Report

Vice Chair Jan Palmer, DVM, stated that the group met this morning and discussed the fair meets and jockeys – whether to revisit the incentive system or change the bonus structure. She reported that Randy Evers, Executive Director of the Oregon Horsemen's Benevolent and Protective Association, will meet with representatives of the Jockeys' Guild. She also noted that homeless and displaced persons around Portland Meadows are no longer a problem.

New Business:

Oregon Thoroughbred Owners & Breeders Association (OTOBA) – Owners' Bonus payments

Lynnelle Fox Smith, Executive Director of OTOBA, appeared before the Commission to request permission to pay owners' bonuses. She noted that by statute, OTOBA receives .75 percent of the Portland Meadows (PM) handle, which it distributes to owners of Oregon-bred Thoroughbreds who had earnings at PM during the last meet. That percentage comes to \$188,950 this year. OTOBA retains 5 percent of that to cover administrative costs, leaving \$179,502.47 to be distributed to 69 owners of 89 horses. Oregon-bred Thoroughbreds at the last PM meet earned \$359,399; distributed proportionally, that comes to a 49.95 percent bonus paid back to owners, she stated.

Action: Approve payment of owners' bonuses by OTOBA

Motion: Vice Chair Jan Palmer, DVM

Seconded by: Commissioner Diego Conde

Vote: Commissioners Williamson, Palmer, Conde, Dudley and Huber voted AYE, and the motion carried unanimously (5:0).

Ms. Smith also provided information on key Oregon-bred statistics, from 2013 to 2017. Oregon-bred earnings, like Thoroughbred earnings as a whole, are down at PM, she stated. However, the purses for Oregon-breds at the fairs have increased substantially, she noted, largely due to the series race that started in Union and will end in Burns with a \$10,000 purse.

Ms. Smith also distributed a report on how OTOBA spent hub funds in the 2015-17 biennium. She noted that the organization has \$19,000 remaining, which was designated for a derby canceled in January. OTOBA intends to run another race in the fall using those funds.

Ms. Smith noted that the 14-member OTOBA board has some new faces on its executive committee: Gordon Tallman is the president; Sam Dronen is vice president and Carol Duby is secretary. The organization in June awarded a \$1,000 scholarship to Renee Bauman, an Oregon State University veterinary student who also received an OTOBA scholarship last year.

Commissioner Conde noted that foal registrations dropped sharply last year, to 51 horses, from previous years and wondered what the reason might be.

Ms. Smith stated that one big factor was the advent of Instant Racing in 2013, which made everyone optimistic that money in racing would increase and led them to breed more horses. When that money did not materialize, breeding dropped off. Also, she noted that Dr. Jack Root and Cookie Root have cut back dramatically on breeding at their Oakhurst Farm, due to personal reasons, and theirs was one of the largest breeding operations in the state.

Chair Williamson noted the Commission's support for OTOBA's foal registration program, and Ms. Smith agreed that program had stopped the "hemorrhaging." The program, which is continuing, reimburses breeders \$225 of the Jockey Club registration fee. She added that so far this year, 27 horses have been registered, with more expected by the end of the year.

Commissioner Conde encouraged OTOBA to bring more ideas to the table.

Contested Cases:

Chair Williamson noted that in the matter of Nick Lewis Lowe, OAH Contested Case #2016 –ABC-00163/ORC Case No. 862 SC16-044, he wanted to give the licensee's attorney a chance to talk to the Commission. He stated that ORC counsel had indicated the Commission should have a rule governing its actions in such cases. Chair Williamson stated he wanted the licensee/his attorney to have 10 minutes to highlight what they think is important in the case, before the Commission meets in Executive Session. He added that rather than having a rule to that effect, he would like the Commission to be able to determine what to hear based on each specific case.

Counsel Catriona McCracken of the Attorney General's office clarified that the Administrative Procedures Act does not require time be given for oral presentation with regard to exceptions. On the other hand, there is no prohibition against giving time for a verbal presentation, if a Commission desires it. She has recommended to the Commission that consistency is important: what is provided for one should be provided for all.

She added that the Commission could have a rule that retains discretion within the board; for example, it could decide whether to grant an oral presentation based on how complicated the case is. Because this is a new process that the board has not done in the past, she stated, the board should consider whether it wants to make this change in procedure, then deal with this particular case, then adopt a rule so everyone knows what opportunities are available going forward. Currently, the Commission's rules don't speak to whether people are allowed to make a verbal presentation.

Chair Williamson stated that, historically, the Commission had the ability to do that. Allowing oral presentations is not a new thing for the Commission, he added, not allowing them would be. This was a policy, not a rule, he added.

Counsel McCracken clarified that a verbal presentation on written exceptions already given cannot add to the evidence already in the record – the presentation must be limited to information already in the record.

Chair Williamson asked if the Attorney General's office would find it satisfactory if the Commission allowed 10 minutes for oral presentation and 10 minutes for questions from the Commission in the Lowe case.

Counsel McCracken advised that the Commission can do that – it does not need permission from the Attorney General's office – and does not have to write a rule for this case. However, it should have a rule in place going forward stating that everyone has the opportunity to request the ability to make a verbal oral presentation. Furthermore, the Commission has discretion to determine how long that presentation will be, depending on the complexity of the case.

Vice Chair Palmer asked why a rule was required, rather than a policy. Counsel McCracken responded that this is not a policy question but a procedural, due-process question, which is better set out in a rule.

Chair Williamson asked Director McGrail to draft a rule for consideration by the Commission next month. Director McGrail stated that he agreed with Vice Chair Palmer that the Commission could make it policy that each litigant is entitled to a fair amount of time, but if a rule is necessary, that is OK. He added that the Commission would benefit from hearing oral presentations in all these cases, noting that the Commission sees so few of them that providing time for oral presentations is not cumbersome.

Chair Williamson suggested that the rule should include language that after the case is finished, Counsel McCracken is to advise the litigant and his/her attorney about their rights on appeal, and that they have up to 10 minutes for their presentation, making treatment of people before the Commission more consistent.

Commissioner Conde asked if the rule would state that a person has the right to request a hearing, or if it would state that the hearing has to be provided.

Counsel McCracken advised that most boards' rules specify the litigant has to request a verbal presentation – some people do not want make a verbal presentation. It is up to the Commission whether to provide the presentation time, she stated, explaining it can be discretionary depending on the complexity of the case. The point is to make sure everyone has an equal opportunity to make the request.

Counsel McCracken asked Chair Williamson if he wished her to contact the attorney in this case and advise him about an oral presentation, and if so, how much time was to be allowed. Chair Williamson replied in the affirmative and set 10 minutes for the presentation and 10 minutes for Commission questions.

Other Business As May Properly Come Before the Commission:

None

Public Comment:

None

Confirmation of the Next Commission Meeting:

The next Oregon Racing Commission meeting will be Thursday, August 17, 2017, at 1:30 p.m. in Room 1D of the Portland State Office Building (PSOB), 800 N.E. Oregon St., Portland, OR. The FROG meeting will be at 10 a.m. August 17 in the same place.

Executive Session:

The Commission went into Executive Session at 2:05 p.m., pursuant to ORS 192.660(2)(i) to review and evaluate the performance of Executive Director Jack McGrail. It emerged from Executive Session at 2:30 p.m.

Adjournment:

Action: Motion to adjourn.

Moved by: Vice Chair Jan Palmer, DVM

Seconded: Commissioner Diego Conde

Vote: Commissioners Williamson, Palmer, Conde, Dudley and Huber voted AYE, and the motion carried unanimously (5:0).

There being no further business, the meeting was adjourned at 2:32 p.m.