



Minutes
Oregon Racing Commission
February 17, 2022

Meeting Detail

The Oregon Racing Commission (ORC) met at 1:30 p.m. Thursday, Feb. 17, 2022. The meeting was held via videoconference.

Call to Order

Chair Diego Conde called the meeting to order at 1:30 p.m.

In Attendance

Commissioners: Chair Diego Conde; Vice Chair Steve O'Hagan; Commissioner Charles Williamson; Commissioner Jan Palmer, DVM

Staff

Executive Director Jack McGrail; Catriona McCracken, Assistant Attorney General

Agenda Items

Approvals:

Action: Approval of the meeting agenda

Moved by: Commissioner Charles Williamson

Seconded: Vice Chair Steve O'Hagan

Vote: Commissioners Conde, O'Hagan, Williamson and Palmer voted AYE, and the motion carried unanimously (4:0).

Action: Approval of the minutes from the Jan. 20, 2022, ORC meeting

Moved by: Commissioner Charles Williamson

Seconded: Vice Chair Steve O'Hagan

Vote: Commissioners Conde, O'Hagan, Williamson and Palmer voted AYE, and the motion carried unanimously (4:0).

Old Business:

Executive Director's Report

Director McGrail gave an update on the Horseracing Integrity and Safety Act (HISA): Oral arguments were heard yesterday in federal court in Texas, with the national Horsemen's Benevolent and Protective Association arguing that the act represents an unconstitutional delegation of power. While waiting for a ruling, the ORC will continue to prepare for the act's

going forward. Participation entails some cost to the state, with estimates ranging from \$130,000 to \$420,000. The act has two components, one related to covering racetrack safety programs and the other having to do with an enforcement agency related to anti-doping. The U.S. Anti-Doping Agency (USADA) was going to be that agency, but talks have broken down. Director McGrail summed up that a lot remains up in the air.

Three summer race meets – Eastern Oregon Livestock Show (EOLS), Crooked River Roundup, and Tillamook County Fair – are on track for this summer, Director McGrail reported. All have made improvements to their facilities and invested in equipment. He noted that SunDowns in Kennewick, Wash., plans to run six days between April 23 and May 8, and that should benefit the horse population at EOLS.

Regarding the recent Department of Justice (DOJ) legal opinion to the ORC, Director McGrail explained the gist is allowing historical horse racing (HHR) at Grants Pass Downs would be allowing unconstitutional gaming activity. He stated this was clearly at odds with legislative counsel at the time the statutes were enacted and it's difficult to reconcile when HHR occurred four years at Portland Meadows. Director McGrail noted that Kentucky, Virginia, New Hampshire, Arkansas and Wyoming have all found HHR to be a legal, skill-based pari-mutuel activity, adding that the Oregon Legislature intentionally “tossed a life preserver” to the horseracing industry when it passed HHR. He stated this opinion thwarts that and will be a blow to the many who work directly and indirectly in the industry, as well as to Josephine County. Although the ORC is constrained by the opinion and Gov. Kate Brown's letter, he stated that the courts may ultimately decide the issue.

Executive Session

Chair Conde noted that the next item on the agenda was a potential executive session to discuss legal advice or pending litigation regarding TMB Racing's application for HHR machines in Grants Pass. Chair Conde stated that the DOJ opinion is final and the agency's marching orders are clear, so there is no need for an executive session.

New Business

Review and possible approval of 2022 Tillamook County Fair Form A

Director McGrail stated that everything was in order on the Tillamook County Fair's Form A.

Action: Approve Tillamook County Fair Form A

Moved by: Commissioner Charles Williamson

Seconded: Vice Chair Steve O'Hagan

Vote: Commissioners Conde, O'Hagan, Williamson and Palmer voted AYE, and the motion carried unanimously (4:0).

Review, consideration and possible adoption of resolution related to the Flying Lark

Chair Conde stated that the resolution about to be presented is not the ORC vote on authorization of HHR at the Flying Lark, but rather the statement reflects the Commission's independent and sound discretion in the matter.

Commissioner Williamson explained that the resolution expresses the ORC view that the Flying Lark is 1) a completely legal and constitutional entity. 2) It is not a casino – it has no roulette

wheels, craps, blackjack or Lottery. 3) HHR was licensed in Portland and should be licensed in Grants Pass. 4) The machines allow a level of skill and are clearly different from slot machines. 5) The machines are pari-mutuel. 6) The Legislature found the machines to be legal and constitutional and permitted them in Portland for four years.

Commissioner Williamson summed up that the resolution states that the Oregon Racing Commission would license the Flying Lark by allowing its application if it were not prohibited from doing so by the Attorney General's opinion and the Governor's letter.

Action: Adopt the resolution on the Flying Lark as a statement by the ORC

Moved by: Commissioner Charles Williamson

Seconded: Vice Chair Steve O'Hagan

Vote: Commissioners Conde, O'Hagan, Williamson and Palmer voted AYE, and the motion carried unanimously (4:0).

Review, consideration and possible vote on Flying Lark application to conduct historical horse racing activities

Chair Conde stated that he does not understand the DOJ opinion and he "cannot reconcile what's happening here with Oregon law." He added that his understanding is that ORC 462.155 authorizes the HHR machines, a statute is presumed valid until a court of law determines otherwise, and this decision might be infringing on separation of powers law. However, he stated, the Commission has its marching orders and will do as told. He noted the likelihood that the matter will not be concluded here.

Action: Issue a notice of proposed intent to deny TMB Racing LLC's Oct. 4, 2021, previously-held-race wagering application and opportunity for hearing based on its not being permitted by Oregon law as interpreted by the DOJ and that the Commission directs staff to work with the Attorney General's office to issue a formal notice of intent.

Moved by: Commissioner Charles Williamson

Seconded: Vice Chair Steve O'Hagan

Vote: Commissioners Conde, O'Hagan, Williamson and Palmer voted AYE, and the motion carried unanimously (4:0).

Public Comment:

Travis Boersma, president of TMB Racing, stated that he understood the DOJ opinion affected the Commission vote. He added that his team thinks the opinion is wrong and deeply flawed, noting that it would mean state leaders, including the DOJ, stood by, and in some cases supported, unconstitutional gambling for years at Portland Meadows. Nevertheless, he stated, he feels confident there is a path forward.

Mr. Boersma noted the decision means more than 200 people will lose their jobs at the end of the month, which he finds heart-wrenching. However, he added, he cannot let an industry close to his heart die. Mr. Boersma stated he is so confident of finding a path forward that he will fund the spring, summer and fall meets at GPD out of his own pocket. That, he added, allows time for TMB, the state and the tribes to reach an agreement that will create jobs and ensure horseracing remains in Oregon.

Dave Nelson of the Oregon Quarter Horse Racing Association (OQHRA) expressed his “sympathy” to Commission members for dealing with the executive side of government seemingly “picking winners and losers.” He also expressed the group’s appreciation to Mr. Boersma, adding that 60 to 70 percent of OQHRA membership is of Hispanic heritage, and horse racing is a huge part of that heritage. He added that he was deeply disappointed in the DOJ and an opinion that falls short of a good Attorney General’s opinion.

Candy Morasch, Grants Pass native and resident, stated that she was 2000 percent behind TMB Racing and anything that supports the horse industry in Grants Pass. She noted that she is a proud and happy sponsor of the races.

Ron Sutton of the Oregon Horsemen’s Benevolent & Protective Association thanked Mr. Boersma. He noted that he and Mr. Boersma share a passion for horse racing. “We need to get this figured out,” he said, and expressed the hope that the industry could work together to do that.

Joy Hiler, a 30-year resident of Grants Pass, thanked Mr. Boersma for taking a stand. “Every single Hiler supports you,” she said.

Keith Johnson, who said he has worked in the industry for 33 years with AmTote and PariMAX (HHR inventor and provider), thanked the ORC and applauded Mr. Boersma’s efforts to keep horse racing going in Oregon. Mr. Johnson took issue with the DOJ opinion, calling it flawed in relation to how the PariMAX product works. He stated that he is 100 percent confident that PariMAX’s HHR is pari-mutuel and a game of skill. He stated he supports HHR and hopes the right opinion will ultimately prevail.

Anna Richter Taylor, who works with the Cow Creek Band of Umpqua Tribe of Indians, noted that the issue has never been about live horse racing, adding that there is still an opportunity for partnership and support of that. She stated the tribe agrees with the DOJ opinion. Ms. Taylor noted that tribal consultation – by any state agency – if done early and properly, can result in mutually agreeable resolutions. Also, she stated, economic development is important to all nine of the federally recognized Oregon tribes, who live and serve in rural areas and provide more than 11,000 jobs statewide. She added that the narrative that the decision will result in a reduction of economic development in Southern Oregon is false. She stated that she hopes this is an opportunity to come together and support rural areas and live horse racing without the gambling aspect of HHR.

Mr. Boersma responded by noting that the decision resulted in the loss of more than 200 jobs and asked the community to extend support to all the laid off families. He noted this has been a long road, and all parties – tribes, legislators, state government – were apprised of every step, but raised no cautionary flags. He concluded that he was not giving up and would “continue to be a force for God and a force for good in this endeavor.”

Chair Conde stated that his heart goes out to those families. It was not an easy decision for any of the Commission, he noted. “We tried.”

Other Business as May Properly Come Before the Commission:

None

Contested Cases:

None

Confirmation of next meeting:

The next Commission meeting is scheduled for 1:30 p.m. March 17, 2022, via videoconference.

Adjournment:

Action: Adjourn meeting

Moved by: Commissioner Charles Williamson

Seconded: Vice Chair Steve O'Hagan

Vote: Commissioners Conde, O'Hagan, Williamson and Palmer voted AYE, and the motion carried unanimously (4:0).

There being no further business, the meeting was adjourned at 2:02 p.m.