



Minutes
Oregon Racing Commission
Oct. 21, 2021

Meeting Detail

The Oregon Racing Commission (ORC) met on Thursday, Oct. 21, 2021. 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 Steven O'Hagan; Commissioner Jan Palmer, DVM; Commissioner Charles Williamson

Staff

Executive Director Jack McGrail; Catriona McCracken, Assistant Attorney General

Agenda Items

Approvals:

Action: Approval of the meeting agenda, amended to change “review and possible approval of totalizator licenses” to “report on potential totalizator licensees” with no vote taken today

Moved by: Commissioner Charles Williamson

Seconded: Commissioner Jan Palmer, DVM

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

Action: Approval of the minutes from the Sept. 16, 2021, ORC meeting

Moved by: Commissioner Charles Williamson

Seconded: Vice Chair Steve O'Hagan

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

Old Business:

ADW Subcommittee Report

Commissioner Williamson reported that the subcommittee met today to consider new technology available to bettors. They decided there was no need to act at this time but will continue to monitor it.

Executive Director's Report

Executive Director McGrail complimented Grants Pass Downs (GPD) on the fall meet's safety record. He noted that Monday is Oregon Championship Day at the races.

The ORC is in 100 percent compliance with the governor's mandate requiring employees be vaccinated against COVID-19 or file exemptions, he reported.

The Commission has begun a recruitment, which closes Nov. 3, for a mutuels auditor. The job will be based in Grants Pass.

Regarding the fairs, Director McGrail reported that Jordon Bennett is no longer with the Harney County Fair. It remains to be seen what the fair board decides about horseracing.

On the national front, Director McGrail noted that the federal Horseracing Integrity & Safety Act (HISA), scheduled to take effect next July, has been challenged by several Horsemen's Benevolent & Protective Associations, including the national outlet, around the country, as well as six states.

Every 2- and 3-year-old running now has a digital tattoo, as well as many of the 4-year-olds. He noted this is an important tool in preventing the wrong horse from running in a race.

Grants Pass Downs (GPD) Report

Randy Evers, GPD president, reported that the meet has completed 12 of 18 race days, and all horses and jockeys have come back safely after races. Crowds and handle are both down a little from last year, he said, noting the weather has been cooler and wetter than last year.

Tony McGlothlin, director of racing, reported the track is holding up well despite the rain. A few races have been canceled due to weather, but those are being made up. GPD added 400 tons of sand to the track last week. There were 450 horses on the backside, an all-time high, on Oct. 4. That is down to about 380 now, but some fresh horses are expected in.

Mr. Evers stated that handle at the 11 OTBs has been down, which he attributed to older fans being reluctant to come out due to COVID. GPD continues to look for new outlets in Hermiston, Beaverton, and Ontario.

New Business

ORC report on status of TMB Racing, LLC, HHR application

ADW Supervisor Connie Winn reported the application documents are under review, with several pieces outstanding, including those related to responsible wagering, maintenance, testing

and audit of terminals, background checks (not all staff is hired), final schematic review, and final onsite inspection.

TMB Racing, LLC, report on application and plans for HHR at The Flying Lark

Mike Thiessen, president of The Flying Lark, called historic horseracing (HHR) at The Flying Lark an industry-saving project; without HHR and the purses it generates, racing would have a quick demise. He noted The Flying Lark is a unique public-private project, with about 60 percent of the construction contracts going to the local market, increasing employment in Southern Oregon. The facility is expected to generate 200 to 250 jobs locally, he added, which he called a meaningful number in light of Josephine County's unemployment rate.

In response to a question from Commissioner O'Hagan about the nationwide slide in wagering on horseracing, Mr. Evers noted that wagering at tracks and OTBs is stagnant, while online wagering has proliferated. Small tracks are struggling, he said, which is why in 2013, the Oregon racing industry asked the Legislature to approve HHR to in an effort to keep racing alive. Mr. Thiessen added that HHR will increase purses, which in turn will make it more profitable to raise and race horses in Oregon.

Chair Conde asked Mr. Thiessen if he anticipated any problem with the pending documents, and Mr. Thiessen replied no. He stated that the ORC's requests are thorough and as expected.

Reports on 2021 Summer Fair Meets

Eastern Oregon Livestock Show (EOLS)

Nate Jacob, EOLS director of racing, reported on the Eastern Oregon Livestock Show (EOLS), held June 11-13 in Union. He noted that after the event's cancellation last year due to the pandemic, the public was anxious to get out and attendance was good. The handle was up \$361 over 2019.

The most concerning aspect of the event, Mr. Jacob said, was the number of entries – 47 fewer than in 2019, despite purses being higher (\$2900 to \$4100). Although they planned to run 19 races, they ran only 15 because they could not fill the others. He noted the ORC provided \$10,000 for improvements, including rebuilding fences around the track.

Mr. Jacob also expressed concern about potential increases in jockey insurance next year and noted the short turnaround to get the racing secretary from GPD to Union in time for the meet.

Crooked River Roundup (CRRU)

Doug Smith, director of racing, summarized the Crooked River Roundup (CRRU), July 14-17 in Prineville. Attendance the first day was 6,000 people, he said, and the handle on two races was \$14,678. The remainder of racing that night was canceled after the tragic death of jockey Eduardo Gutierrez Sosa in a freak racing accident. Mr. Smith called it one of the most traumatic experiences of his life. He added that in the immediate wake of the accident, the horseracing community and the citizens of Prineville raised \$42,000 for the Sosa family.

On Thursday, attendance was 4,800 and handle \$58,809. Despite 31 betting windows manned by volunteers and six self-service betting machines, he said, the meet could not keep up with the

money that was there to be wagered. Saturday saw a handle of \$92,868, making it the third largest Saturday ever in the meet's history. Estimated attendance for the four nights of racing was 23,000.

Mr. Smith stated that CRRU's challenges include increasing the number of horses entered -- average field size was 6.2 horses on Friday and 6.1 horses on Saturday -- and working with United Tote to upgrade wagering equipment. He added upgraded equipment would permit CRRU to use United Tote's FastBet Mobile app, which would work off secure wifi being installed at the fairgrounds. He noted there was no simulcast this year because of the cost; organizers decided to focus on things they knew they could break even on.

Mr. Smith noted the overall cost of equipment for the fairs; for instance, when CRRU loaned its starting gate in 2019 to the Harney County Fair, it was returned bent and had to be repaired. No summer meet can afford to buy a new gate, he stated, adding that with the increasing cost of vehicles, fuel, etc., purses must keep growing to attract horsemen to keep the fairs in business.

Mr. Smith noted that he does not expect a dramatic increase in jockey insurance. There was a serious accident at the Tillamook County Fair in 2019; he expects this year's accident to be comparable in the eyes of the insurer.

Review and Possible Approval of Totalizator Licenses: Ainsworth Game Technology; HHR Oregon LLC; Konami Gaming Inc.

ADW Supervisor Winn stated that one background check is pending for HHR Oregon, but otherwise 100 percent of the documents are in for the three applicants. She introduced representatives from each company.

Chair Conde invited them to return when the Commission is scheduled to vote on the licenses. He explained that the Commission had to refer a question to its attorney and apologized for the short notice to applicants about the delay in voting.

Key Performance Measures (KPM) Report

Karen Pate, ORC administrative assistant, reported on the Annual Performance Progress Report, which is part of the agency's budget document. The report comprises four key performance measures: animal safety, license turnaround time, excellent customer service, and best practices.

The KPMs define Animal Safety narrowly, as the number of race-related equine fatalities per 1000 starters, Ms. Pate explained. Because of COVID, Oregon racing was curtailed the past fiscal year, with all summer fair meets canceled in 2020. Oregon starters for the fiscal year totaled 2,307 horses, and four of those suffered race-related fatalities. That results in a rate of 1.73 fatalities per 1000 starters, which is above the ORC target of 1.5 per 1000 starters, as well as above the national average, according to the Jockey Club, of 1.41 horses per 1000 starters.

However, the extremely small sample gives outsized statistical influence to breakdowns in any given year, Ms. Pate added, noting that New York, for example, had more than 21,000 starters in 2019. Looking at a span of several years, Oregon's trend is downward. Over the past four years,

the state saw a total of 12,309 starters and 14 fatalities. That works out to 1.14 horses per 1,000 starters – below the national average. The ORC is at 132% of goal over the four-year period.

For license turnaround time, she stated, the ORC goal is to process licenses within five days of receipt. Despite challenges that include staff changes in the licensing department, the migration of most licensing functions from Portland to Grants Pass, and staff working at home much of the time because of COVID (resulting in delays in mail handling), the Commission is meeting target. ORC investigators in Grants Pass process license requests, with a few exceptions, the day they come in.

Excellent Customer Service is measured by a survey on customer satisfaction. The survey is available on the website and in the past has been distributed to stakeholders. This year, because of COVID, summer fair meets were canceled, staff was adjusting to working from home, and horsemen had their own challenges to deal with. The agency did not actively seek survey responses.

The fourth KPM is the Commission's self-assessment of how they are doing in meeting 15 Best Practices criteria, such as reviewing budgets, evaluating the executive director's performance, being appropriately involved in policy-making, etc. Target is 100%, and the agency was just under that at 98%, again because of challenges presented by COVID, Ms. Pate stated.

Review and Possible Approval of 2022 Commission Dates

Chair Conde stated the proposed meeting dates for 2022 continue to be the third Thursday of each month. They are: Jan. 20, Feb. 17, March 17, April 21, May 19, June 16, July 21, Aug. 18, Sept. 15, Oct. 20, Nov. 17, Dec. 15, as well as Jan. 21, 2023. Locations are to be determined.

Commissioner Williamson stated he would like the Commission to meet in Grants Pass at some time next year, if possible in light of the pandemic. Other commissioners indicated their support.

Action: Approve proposed 2022 Commission meeting dates

Moved by: Commissioner Charles Williamson

Seconded: Vice Chair Steve O'Hagan

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

Other Business as May Properly Come Before the Commission

None

Public Comment:

Three representatives from Oregon's tribes addressed the Commission.

Don Gentry, chairman of the Klamath Tribes, said approval of HHR at The Flying Lark will hurt Oregon's nine federally recognized tribes. The tribes are sovereign nations, but there has been no consultation between the ORC and the tribes, as required by law, and no proactive outreach to the tribes, he stated. Mr. Gentry added this is a violation of promises made to the tribes and no action should be taken on HHR until consultations are complete.

Commissioner Williamson asked for specifics about what the tribes wanted, and Vice Chair O'Hagan asked if there is a formal mechanism that has not been followed.

Mr. Gentry responded that the tribes wanted to be consulted, individually or collectively, and part of the problem is lack of formal policy. He added the Commission also has a moral obligation to consult them.

Alisha McAuley, executive director of the Cow Creek Gaming and Regulatory Commission, echoed Mr. Gentry's complaints, adding that their request for formal consultation had been declined. She asked that the Commission take no action until consultation is complete.

Noting that she has been a gaming regulator for 20 years, Ms. McAuley said she has seen the HHR machines and they are slots and The Flying Lark is a casino. She expressed concerns about regulation of the facility and Commission review of the operating plan. She noted that the tribes commissioned two independent studies that take into account the effect HHR will have on the tribes, lottery retailers and the local community and found that the market is already saturated – The Flying Lark will not attract new gamblers but pull from lottery retailers and tribal casinos.

Ms. McAuley stated that Oregon needs a “timeout” to step back and evaluate the role of gambling in the state. She asked that no action be taken on The Flying Lark application until the state makes a comprehensive review of gambling.

She noted common ground exists: The tribes recognize the need for economic development in rural areas and support horseracing – “it is part of our history and part of our culture.” She stated the tribes hope the horseracing industry will partner with them in finding a better way to support the industry in a way that will benefit both.

Justin Martin, a representative of the Confederated Tribes of Grand Ronde and association manager for the Oregon Tribal Gaming Alliance, stated that he, too, supported holding off on the application until the state conducts a comprehensive review of gambling. He noted that he appreciated outreach made by GPD's Travis Boersma, but that did not constitute tribal consultation. He also noted that the tribe is not opposed to horseracing. Mr. Martin stated that the decision should not rest solely with the Commission, but the Legislature should play a role as a policy body, and a decision of this magnitude should go through an extensive public process.

Kitty Martz, executive director of Voices of Problem Gambling Recovery, also addressed the Commission to express her support for a pause in the process. She stated that gambling technology has had a negative impact on gambling access and addiction, adding that machines such as HHR are faster, more accessible, and reaching more youth. She noted that a 2016 survey found 8 percent of Oregon adults have a gambling problems. She added the recent three studies done on the impact of HHR do not mention the social cost or impact on addiction, which should be part of the conversation before any application is approved. Noting that safety is a frequent topic at Commission meetings, she asked, “What about public health?”

Chair Conde thanked Ms. Martz and tribal representatives for their comments. He noted that the Commission disagrees with them on some points, but looks forward to meetings with the tribes and fruitful outcomes for both tribes and the industry.

Chair Conde asked that comments made in the teleconference “chat” be added to the record as public comment.

Contested Cases:

None

Confirmation of next meeting:

The next Commission meeting is scheduled for 1:30 p.m. Nov. 18, 2021, via videoconference.

Executive Session

The Commission went into Executive Session at 3:31 p.m., pursuant to ORS 192.660(2)(f) on the basis of ORS 192.355(1), (2)(a) and (4), discussion of employment information of a personal nature submitted in confidence. The Commission resumed public session at 4:15 p.m.

Adjournment:

Action: Adjourn meeting

Moved by: Vice Chair Steven O’Hagan

Seconded: Commissioner Jan Palmer, DVM

Vote: Commissioners Conde, O’Hagan, and Palmer voted AYE, and the motion carried unanimously (3:0). (Commissioner Williamson did not rejoin the meeting for adjournment.)

There being no further business, the meeting was adjourned at 4:17 p.m.