

MINUTES

OREGON RACING COMMISSION December 16, 2004

The Oregon Racing Commission met on December 16, 2004, at 1:30 p.m. in Room 140 of the Portland State Office Building located at 800 NE Oregon Street, Portland, OR. Commissioners in attendance were Steve Walters, Chair, Jeff Gilmour, Lisa Metcalf and Julianne Davis. Agenda items were discussed in the following order with resulting actions:

1. Approval of November 18, 2004 Minutes

ACTION: MOTION (Metcalf) VOTE: Minutes are approved as submitted.

VOTE: 4 Aye, 0 Nay

2. Portland Meadows Race Meet Report

Chris Dragone: Live handle is down 19%, simulcast is down 15% from a year ago. Exports are up 13% over last year. Levels seem to be consistently down at this level both at the dog track and the horst track since March 2004. In light of that, there will be a scheduling change; races will be run on Saturdays, Sundays and Mondays and they will drop Fridays. They did have a very successful Oregon Day last Saturday. Chris expressed his appreciation for the Breeders Association and the HBPA for all of their help. He also thanked Commissioner Gilmour for attending. They hosted the National Cross Country Championships sponsored by Nike on Dec. 4 which was very successful and was broadcast on Fox TV.

Commissioner Metcalf asked Chris to comment on the number of breakdown injuries. Four horses broke down in the last week. One was an embolism and one might have been caused by the track. In his opinion the other two were not caused by the track. Chris doesn't feel that they have an unsafe racing surface at Portland Meadows. Metcalf asked him to comment on a race where the jockeys refused to ride, but Chris said there was no such incident. They did cancel one day after three races because the track had been worked on and there was a problem with the turn. Chris had the track washed the day before and it affected the track during the next day's race.

Metcalf requested information on the results of track expert that was to review the surface. Chris said the expert, Bill Murphy, suggested they continue to float the track and try to make it as level as possible using a laser blade to grade the track. They have implemented those recommendations and ordered new floats and borrowed better ones in the meantime. Metcalf asked if the track committee is still meeting on a regular basis; Chris said they are. The committee has given Magna some recommendations such as washing the track, which they have implemented.

Jodi asked for an updated on the condition of the riders who were hurt at the track recently. Chris said last he heard Ms. Hoonan is back in Seattle; Juan Gutierrez will be fine but will go ahead with previously scheduled knee surgery which will keep him out about two weeks. The jockey that was injured on Monday, Brian Theriot, was briefly hospitalized but has accepted mounts for this week.

Commissioner Metcalf asked the rest of the commission members about the funds for the necropsy project. Jodi said the budget analysts asked that they get the numbers fully prepared and take it up with the emergency board as an e-board item rather than put it into the ORC budget. It will not happen this biennium, but likely the next.

3. Multi-Jurisdictional Hub Issues

a. Initiate Rulemaking on Hub Sub-committee Recommendations on Hub Tax Policy

Commissioner Davis reported that the amendment has been issued and circulated with the changes discussed at the last meeting:

Each hub license in Oregon will pay .125% on the first \$60 million of gross mutuel handle;
Each hub license in Oregon will pay .25% in excess of \$60 million of gross mutuel handle;
That will be capped at \$300,000 from fiscal year 2006 (July 1, 2005 – June 30, 2006), in 2007 capped at \$325,000 and in 2008 capped at \$350,000.

Davis wanted to initiate the rulemaking process and invite comments. This would consist of further comment on a proposed rule, public hearings as necessary, revisions or adoption. Chair Walters asked if there were any questions from the other commissioners. Commissioner Gilmour wanted to clarify that the proceeding would be open to the public and noted that he would like to be a part of it.

ACTION: MOTION (Gilmour) VOTE: Initiate the rulemaking process.

VOTE: 4 Aye, 0 Nay

b. Priority Guidelines for Distribution of 2005 Hub Funds

Commissioner Gilmour discussed with Commissioner Thorne the obligations for 2004. He met with Carol Morgan and found that we have enough money to pay for 2004 obligations. There is an estimate on how much will be distributed under the applications (which are due by December 31) and based on that they will take a look at Tier 1 and clarify the jockey incentive program, the county fair purse supplements and a few other items. Other requests will be considered after that.

Gilmour has seen and been impressed by the projects that have been accomplished with the 2004 hub funds, but understands that some organizations might want to take a year off in order to plan for the future. A sub-committee meeting will be held in February to make recommendations, and the requests will be considered at the February commission meeting. Commissioners Gilmour and Thorne will be attending the county fair annual meeting to see where they are with their plans. Commissioner Walters noted that emergency needs will be considered, especially for safety issues.

4. Proposed Order for Kristin O'Donnell

Raul Ramirez: The proposed order was issued on November 29, and no written exceptions have been filed by Ms. O'Donnell. If the commissioners would like to review the tape that is relied upon for findings of fact in this case a viewing can be arranged for the next commission meeting. Chair Walters felt he might want to see the tape if there were exceptions filed, but since the hearings officer reviewed the films and heard testimony, he doesn't feel it necessary. The other commissioners agreed.

ACTION: MOTION (Metcalfe) VOTE: The proposed order is adopted

VOTE: 4 Aye, 0 Nay

5. Proposed Stipulated Order for Melissa Peery

Raul Ramirez: The proposed order was issued, and no written exceptions have been filed by Ms. Peery. The ALJ determined that only one rule was violated rather than the two that were originally cited. Ms. Peery was in attendance and Chair Walters allowed her to address the Commission.

Melissa Peery: She appealed the ruling handed down by the stewards on March 6 regarding riding infractions, and was granted a stay to continue riding until the hearing. She was given a printout of rule 462-13005 and number 5 of that rule clearly states that "appeals to the commission shall be heard within 90 days from the date the appeal request is received..." Ms. Peery stated that no one contacted her or informed her for any such request for continuance and her appeal was not heard until October 14, over seven months after her appeal request was received. At the time of the hearing she brought up this point as a motion to dismiss and it was denied in spite of the fact that the presiding steward, Mr. Smith, testified that the rule did apply to her particular case. She believes the hearing brought before the appeal judge was invalid because the States timeline was not properly followed. Chair Walters asked if she made any attempt, motion or request to have a hearing at an earlier date. Ms. Peery did not until she rode at the Harney County fair and she thinks she asked Jodi about it. When they checked into it she discovered the rule previously stated. Upon questioning from Commissioner Walters Ms. Peery admitted there was no

additional evidence she would have presented and she was not adversely affected by not having the hearing within 90 days except for the inconvenience of having to take the days during one meet over the other.

Raul Ramirez: There is no provision in the rule for dismissal of the case if the hearing is not held within 90 days. Based on the dates, the violation occurred toward the end of the race meet at Portland Meadows, and the contested case hearing occurred during the beginning of the next race meet at Portland Meadows. Sometimes the hearings are not held within 90 days to keep the jockeys from having return to Portland between meets when they might not otherwise be in town. That was part of the delay that the ALJ considered. Ms. Peery pointed out that she never asked them to delay her hearing and was available and would have been easily reached for notification.

Commissioner Gilmour asked for clarification that the suspension for riding privileges for three days would be three licensed race meet days and not three days of working as an exerciser or groom. Walters confirmed that is true and that the Executive Director chooses the days to be served.

Commissioner Davis requested discussion of the matter in executive session. Chair Walters told Ms. Peery that they will take up the last two matters on the agenda first then go into executive session and that she was welcome to wait for the vote.

After executive session Commissioner Davis explained that the commissioners felt there wasn't any prejudice as a result of the delay. The commission encouraged the Executive Director and staff to make sure appeals are heard as quickly as possible, certainly within the 90 days as provided by the rule. Given the fact that the commission doesn't have a provision that would allow them to dismiss the case they will make the order final. The vote was as follows:

ACTION: MOTION (Davis) VOTE: The proposed order is approved as submitted
VOTE: 4 Aye, 0 Nay

6. Confirmation of Next Commission Meeting – January 20, 2005

Commissioner Davis will not be available but all others in attendance said they would be. Commissioner Thorne's schedule is unknown but it is assumed that he will be available. The date is confirmed.

7. Motion for New Stewards Hearing Submitted by Attorney for Roger W. Stolp

This request was based on the claim that Mr. Stolp wasn't given adequate notice of the hearing. No one appeared to be in attendance to represent Mr. Stolp. Chair Walters noted that the notice was sent to Mr. Stolp at the current address he had listed with the racing commission. Jim Smith, presiding steward, recalled that the notice was definitely sent to the address of record and that a copy of the notice may also have been sent through the Montana racing commission where they heard he was racing. Chair Walters reminded everyone that the rule states that it is up to the licensee to keep the commission informed of their current address.

The Commission conducted deliberations in private executive session to consider matters relating to pending cases

ACTION: MOTION (Davis) VOTE: Deny the motion for a new hearing.
VOTE: 4 Aye, 0 Nay

There being no further business, the meeting was adjourned.