

MINUTES

OREGON RACING COMMISSION

March 15, 2007

The Oregon Racing Commission met on Thursday, March 15, 2007 at the Portland State Office Bldg, 800 NE Oregon Street, in Room 140. Commissioners in attendance were Chair Jeff Gilmour, Vice Chair Todd Thorne, Lisa Metcalf, Kerry Johnson and Julianne Davis.

Agenda items were discussed in the following order with resulting actions:

1. Approval of February 15, 2007 Minutes

ACTION: MOTION (Metcalf) Approve minutes as submitted.

VOTE: 5 Aye, 0 Nay

2. Portland Meadows Update Reports

Dwayne Yuzik, General Manager, Portland Meadows, was present to answer questions. Information and discussions included the following:

After 61 race days, the average daily export handle is up 53%; Oregon wagering in-state is off by 2.7%, attributed to the cancellations on the East Coast due to inclement weather; in-state average live wagering is off 6%, attributed to the change from racing on a Saturday to a Tuesday.

They are continuing to make up for the lost race days due to inclement weather to reach the 720 days and have 24 races to make up. Last weekend they ran 11 races each day and are scheduled to run 10 each day from now until the end of the meet, but want to run 11 or 12 and will submit an application to Interim Executive Director Tallman requesting the ability to run 12 races. They will possibly race one extra day on a Wednesday in April.

A new OTB site located in Pendleton will be opening in approximately six weeks.

Improvement project for the instant racing and simulcast areas will commence on Monday, March 19, 2007. The completion date is scheduled for the first week of June.

3. Sub-Committee Update Reports

Hub Sub-Committee Update: Vice Chair Thorne explained that the hub rules hearing was held prior to the Commission meeting as scheduled at 10:30 am.

4. Action on Proposed Amendments to Account Wagering Hub Rules OAR 462, Division 210 & 22

The following is a transcript of this agenda item.

Thorne:

For all of you that were here and weren't here, we had a hearing this morning on the hub proposed rules. I think that we've come to an agreement on what we should propose. I'm going to go through these quickly on the easy ones and then we'll probably slow down on some of the larger ones.

[OAR 462-210-0030]

The first change would be Chapter 462-210-0030 Establishing An Account. Sub (1)(a)(F)(c) [correction (1)(c)], that language reads: "All account holder identities

must be verified via electronic means or copies of other documents before a wager can occur.” There’s been no problem with that language all the way through the hearing.

Under sub (5)(b), same chapter, there was just a corrective word “and” put in, so I’m not going to worry about that.

[OAR 462-220-0030]

Chapter 462-220-0030 Approval of the License for a Hub Operation there’s some grammatical changes.

Under sub (2)(i) there is essentially some new language here, which reads: “A list of all hub personnel containing the name, position, job location, license number and expiration date. All current gaming licenses should be listed, regardless of jurisdiction; [(j)] A chart illustrating the organizational structure, including reporting lines; [(k)] A list of all states where the hub is operating; and [(l)] Documentation of proper filing that the Hub applicant and/or parent company is registered to do business in the state of Oregon.” This is under, essentially under the sub sentence that [(2)] “An applicant for a ‘Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub’ license must provide the following”. These are just new inclusions under that. Any questions?

Gilmour: Yeah.

Thorne: Okay.

Gilmour: On the little (i).

Thorn: Yes.

Gilmour: I guess it would be – I missed it here. I should have put my finger on it. Okay it’s (j) “A chart illustrating”; Is that kind of like the family tree?

Thorne: Sort of, but not kinda. A chart, Mr. Chairman, is like a chart of corporate structure of the organization.

Gilmour: Okay, that’s good enough.

Thorne: Will that work?

Gilmour: That’s fine. Thank you.

Thorne: Same chapter sub (3)(d) this is in regards to the source market mitigation. This section will now read: “Mitigation for the effects of account wagering on the source market in Oregon.” That’s a period after that. “In addition to the source market mitigation plan as outlined in the application, more detailed source market information shall be provided by the hub at the commission’s request. Source market fees shall be paid statewide on Oregon accounts. Accounts must be available to Oregon residents if a hub is licensed in Oregon. In event that an Oregon track is a content provider and an Oregon hub is not given access to content by track, that factor may be considered by the commission in determining the amount of source market fee to be paid by the hub.” Little (e) reads: “If an Oregon track and an Oregon hub” and we’ve stricken some language after that. I’m just going to read how we want to propose it: “If an Oregon track and an Oregon hub have not reached an agreement prior to the commission’s consideration of the hub’s annual license application as a result of either party failing to negotiate in good faith, the commission may impose disciplinary action against the offending party.” Any questions of that language?

Gilmour: Yeah, I’ve got some questions.

Thorne: Okay.

Gilmour: Let's go back up to the first paragraph.

Thorne: The first paragraph, Mitigation?

Gilmour: Yes. At what time will the commission determine the amount of source market fee to be paid by the hub, at the time of licensing?

Thorne: That would be at the time of - the point in time where we see an application and a source market agreement has not been reached between the track and the licensee. At that point, if that is something that is officially provided to us in terms of a statement from the licensee, well then at that point then we'd probably step in. I would imagine that before that particular meeting the hub application licensee would probably come to us, either the hub or the track recommending that we intervene. That would be my take on it.

Gilmour: Okay. You'll have to bear with me. I'm trying to put some facts on the record for the intent of this. That's what I'm trying to do.

Thorne: Okay. Good.

Gilmour: I do know that when we license hubs, one of the questions that, typically, we have asked with the license application is their agreements on source marketing at that time.

Thorne: Correct.

Gilmour: Okay.

Thorne: Correct. At the time of us seeing the license.

Gilmour: So, that's not meant to be changed?

Thorne: That's not meant to be changed.

Tallman: No. For clarification, we ask that it be spelled out in their application that they do have source market agreements. We do not expressly require the agreements themselves, merely that they're in place.

Gilmour: Okay.

Thorne: Now I might - this could be probably handled and I might defer this to Kelly, but if we do have a licensed app. that needs to be approved and there has not been an agreement, perhaps the two parties go into arbitration. We determine what the source market fee ought to be and apply it, perhaps retroactively, I don't know if we can do that or not. Any comment, Kelly? What we can do in terms of handling -

Gilmour: - We're just trying to get the bear out of the woods.

Thorne: Yeah, if we had an application and they didn't have an agreement.

Gablks: I certainly think that if you had an application and there was no agreement between the parties that you could withhold approval of the application until there was agreement.

Gilmour: Okay, so that is an option.

Thorne: That is an option, but is there an option to approve? Let them operate, if they needed to, and then once source market fee is determined to apply that retroactively.

Gablks: If your rules specifically require something to be in an application and an applicant is missing a particular factor, then I don't think you would be following your own rules to allow the application to be approved when it was missing something that's required by the rules.

Davis: The bottom line on that one is, Ms. Gablks, is that without a source marketing agreement in place amongst the parties, we would be breaching our own rules should we approve an application and allow operation without that source marketing agreement in place?

Gablks: Actually, if you look at – and we're trying to get at that, so if you look at (d) remember that it says: "In the event that an Oregon track is a content provider and an Oregon hub is not given access to content by track, that factor may be" – and what we assume is they're not given access to that because they don't have a source marketing agreement in place – "that factor may be considered by the commission in determining the amount of source market fee to be paid by the hub." To the extent that we have two people at an impasse and we believe one or the other has acted in bad faith, that's what then (e) says is that we can go ahead and take disciplinary action and part of that disciplinary action could be not approving the application. Or, other discipline that the commission believes is required within the parameters of the discipline we can impose under 462, ORS 462.

Davis: Following up on Commissioner Thorne's question: Would we have the option of doing, sort of, a provisional approval and allowing the operation to go forward on a month by month basis, let's say, until that source marketing fee was hammered out amongst the parties or set by the commission?

Tallman: Kelly, let me ask this, just for clarification: If we did find ourselves in a circumstance where we provisionally granted a license, which it is not uncommon for the commission to grant a license pending one item per the Executive Director's approval, that that could be done? I could also add that I believe it would be within the commission's right to, at the time of the conditional license, state that whatever the source market agreement that is ultimately hammered out would be paid from the inception of the license.

Gablks: I liked the way you used the terminology "conditional license", then I'm okay. If it's a conditional license and that is the condition you want to impose upon it, then you haven't given them a license you've given them a conditional license. I see a difference legally in those two terms.

Thorne: We can delegate authority to the Executive Director to determine the actual source market fee based on pending arbitration, for example.

Gablks: I'm not sure that you could do that. Before I'd give you a definite answer I'd want to look at your statute. In many cases the statute says that the commission shall determine certain things so then I would have a question as to whether or not there was the authority to delegate that to the Executive Director. It may be that the Executive Director could give you a recommendation, but ultimately the action would have to be taken from the commission.

Thorne: Okay, but they've already gotten a conditional license.

Gablks: Right.

Thorne: Which is the important part.

Gabliks: Yes.

Thorne: Nothing in this statement, as you read it, would preclude us from saying, based on the circumstances that we see here, and I doubt this would happen, but it could, our decision as a commission is that zero source market fee is paid.

Gabliks: It says: "that factor may be considered by the commission in determining the amount of source market fee –"

Thorne: - Which could include zero?

Gabliks: - which could include zero.

Thorne: Okay, good. That's what I wanted to look for –

Gabliks: - Or, it could be a million.

Thorne: But that's fine. Okay.

Gilmour: It's usually a percent, not a million.

Gabliks: I'm thinking positive.

Gilmour: I'm thinking positive. I think it's good we put this - go ahead Gordon.

Tallman: I just had one thing with regard to the numbering of the rules. We have number (2)(c) on this page, the (2) is in red. I'm wondering, if in fact, the intent was to correct the numbering because we already have (2), a sub (2) up above.

Gabliks: We looked at this a million times. The problem is, the only reason you get confused is because it's way over on the side, but it's (2) and it says (a), (b) and (c) and then if you look at it, it says, keep reading the sentence: "the information required in subsection (2)(b) and (2)(c) of this rule".

Tallman: Okay, I gotch'a. So that actually is - good catch.

Gabliks: The first time we did the same thing and renumbered everything and then we realized they really were –

Tallman: - That it's not a numbering – I gotch'a. Thanks.

Thorne: Moving on?

Gilmour: I'm glad we got some things put on the table.

Thorne: Okay.

Gilmour: Moving on.

Thorne: Next page here [page 3], we're on the same chapter. Sub (6) has been deleted. This is regarding the bond issue and we have a new sub (6). I hate to have to read through this all – should I read through this all?

Tallman: If there's no changes from the proposed rule, I don't believe there's a need to.

Thorne: Okay. I don't think that there's any problems with this, so we'll just – if there's no questions from members of the commission.

Gilmour: I've got one question.

Thorne: I figured you would.

Gilmour: Is there anything in this new section that allows a hub, for the purposes of bond or collateral, to use a player's account as their collateral?

Tallman: For clarification, the term Player's Trust is actually a custodial account which is a stronger restriction than what is in the currently proposed rule.

Gilmour: Okay.

Thorne: Any other questions, Mr. Chairman.

Gilmour: No, you're doing a great job-

Davis: - I just have one -

Gilmour: - Go ahead.

Davis: Was there any public comment at this morning's hearing on this section?

Thorne: There was no public comment on this section.

Davis: Thank you.

Thorne: Next page [4], same chapter, sub (8): There was no public comment on this section either this morning, I don't believe - yes, there was. I'm going to read through this. This is sub (8): "An applicant must maintain an operational presence within the State of Oregon. A call center for customer wagering, a sub-contract with an existing call center for customer wagering, or a business office is required. In addition, totalizator equipment must be located in Oregon. [(9)] An applicant with a customer call center not located in Oregon must provide the following to the commission: [(a)] Access to customer call monitoring and electronic wagering data; [(b)] On site regulatory visits of the call center by authorized commission staff; and [(c)] Reimbursement to the commission for expenses associated with out-of-state regulatory visits." Any questions by members of the commission on this section?

Davis: This change in the rules appears to address some of the concerns that have been expressed in earlier meetings as to having access to out-of-state call centers and that sort of -

Thorne: Are you on? [your microphone?]

Davis: Yes. Okay.

Thorne: Okay.

Davis: I just wanted to make sure that had been fully addressed to the commission's satisfaction and this does meet my satisfaction.

Gilmour: I have one question.

Thorne: You have a question, okay.

Gilmour: For the record, it is the assumption that the applicants for these hubs are also in a relationship through licensing in their respective state with their respective racing commission. Is that correct?

Thorne: With respect to licensing?

Gilmour: Right, another words, a hub that's centered in, let's just pick a state, let's pick Alaska.

Tallman: Alaska would be problematic. I think I can answer your question, though, if you'd like?

Gilmour: Okay, you're getting to what I'm getting at. Go ahead.

Tallman: In our rules, it states that the type of wagering activity has to be legal, not only in Oregon, but in the state which the customer resides. With that comes the assumption that if something is legal in a state that there's additional regulatory authority overseeing that.

Gilmour: Okay.

Tallman: And typically, we have reciprocity –

Gilmour: - with that other jurisdiction?

Tallman: - with the other jurisdiction. Correct.

Thorne: That's part of the Federal Wire Act that makes all this possible in the first place.

Gilmour: Perfect. That's what I wanted to get on the record. Next.

Thorne: Next –

Gilmour: - Hold it.

Thorne: Wait, wait.

Johnson: Sorry.

Gilmour: Commissioner Johnson.

Johnson: I just have some concerns, Todd, about the language as to whether or not they're having a presence in the State of Oregon.

Thorne: Okay.

Johnson: As far as a physical presence there.

Gilmour: You want a legal description? Okay. What is a legal description, Kelly, of "presence in Oregon"?

Gablks: The legal description is whatever you want it to be. You can add as many factors or delete as many factors as you want. It's really up to the commission to decide what that term constitutes. In this case, what the proposed rule states is that you have to be one of three things: You have to have the call center for customer wagering here, a sub-contract or a business office. And, your totalizator equipment has to be located in Oregon. So you have to have one of those three things.

Gilmour: One follow-up question to that. I'm assuming that the Oregon Racing office would see a copy of the sub-contract. Verification.

Tallman: We have to know that one's in place. We certainly could request it. It's not spelled out in the rule, but I don't think that would meet objection.

Gilmour: Okay.

Johnson: My concern still lies with - These hubs are running large revenues in the State of Oregon. I think, for the integrity of the sport and the industry, that they need to have a physical presence here within the state.

Gilmour: What would you describe that that is not in here. Office?

Johnson: Yes.

Gilmour: Personnel? Okay.

Johnson: A location.

Gilmour: Location.

Johnson: A physical presence.

Gilmour: - physical presence. Okay.

Tallman: With regard to that –

Gilmour: - That's the next deal. Why don't you describe what they do have and what they don't have.

Tallman: What we have currently - and first, I guess, just for clarification - the intent of this rule actually was to put in the rules something more because there really wasn't anything that said there needed to be some physical presence. This was an intent to shore that hole up while at the same time, allowing our already licensed ADW's to continue to operate in a manner that we've already approved them to operate, which would be in the case with the sub-contracts. The US Off-track call center takes calls for more than one other ADW. I think that is a key component of their business and so it would not only punish those who may not have an office here, but also the very call center itself, if we took away that business. I think this is a bit of a compromise. Ideally everybody would be here and all of their operations would be here, but the reality is that there are other states that would grant licenses that didn't have any conditions, most likely. We need to operate fairly and have some stated requirements, but not make them excessive.

Thorne: Just as a note on that, before we even developed this rule, the essence of the precedent that we used to make decisions on what [we] determined was an operational presence in the State of Oregon was: Number one (1), what we were trying to do is - we want to try to create jobs in the State of Oregon or it is our wish that that happens. Number two (2), if you define what operating in the State of Oregon was, the answer would be - we approved a lot of license apps. on this basis – was the tote is located in Oregon and the bet takes place in Oregon so that suffices or that's how we used to approve licenses. This language that we brought in is more restrictive then it used to be, by far, and it helps us to have a framework by which we - it's more of a consistent framework - by which we look at license apps. going forward. I think it's extremely important that as a regulatory body that – I don't want to over rule things. We have to continue to maintain flexibility. I think that what we've done here is tried to establish what we believe is operating in the State of Oregon and that's beyond just the tote being located here. We would hope that despite that this language is still flexible that everybody that applies for a hub license in this State of Oregon would have an office here. I'd love that to be the case, but I think that we have to maintain a bit of flexibility with our perspective towards hubs

what this definition really means. That's why we've come up with this language at this point.

Gilmour: I think, for the record, which I think is real important when we're changing rules, that we've put a lot of separate commissioner thoughts on here. Now, I'm going to add

one thing for all the hubs in the audience. I'll probably make it too plain for everybody. When something goes wrong, I want to be able to grab somebody around the neck and have a face-to-face talk with them. I would strongly advise all the applicants of hubs with their application, if they would make sure in some frame that there is a physical presence of some nature within this state. If something goes wrong, Gordon and I don't have to fly to Alaska, hypothetically, to get a hold of somebody by the neck. When you are putting your applications in, it's my intent that there is something I can literally get a hold of: attorney, I'd rather not; lobbyist, love to. Some physical presence here that I can call on a local area code number and I can meet and talk this over. That's for on the record.

Thorne: Excellent statement.

Gilmour: Okay, moving on.

[OAR 462-220-0070]

Thorne: We're going to move on to chapter [OAR] 462-220-0070. There was essentially no comments in the hearing this morning on this particular chapter. There is a small change. The first paragraph will read, starting with "This" which is about the third sentence: "This shall not prevent the sharing of this information for investigative purposes." Period. Striking the language "with other pari-mutuel regulatory authority or law enforcement agencies".

Gilmour: Found it. Now you're changing something –

Thorne: - We are changing something.

Gilmour: I want to find it. One more time. I found the correct line. Period after purposes. Take everything out?

Thorne: I'm going to re-read it. It shall read now: "This shall not prevent the sharing of this information for investigative purposes." Period.

Gilmour: That's it?

Thorne: That's it.

Gilmour: Okay, I got it. Any other comments? Go ahead.

Davis: I think that modification makes things more clear. I'm all for it.

Gilmour: Okay. Number two (2)?

Thorne: I'm moving on.

Gilmour: Okay, great.

[OAR 462-220-0090]

Thorne: The final piece of language here that we talk to has to do with Enforcement, Chapter 462-220-0090. There's been no comments in the hearing on this particular

language. I will entertain any questions from the commission.

- Gilmour: What does that chapter say, Kelly? We can sue'em and take them to the cleaners?
- Gablks: No. In general, when you have disciplinary action taken under 462.415, it generally starts with the –
- Gilmour: - Hearing?
- Gablks: - Board of Stewards. What this says is that this is not something that's going through the Board of Stewards. This is something that's going to the commission. Generally speaking that means, let's say for example, we have a license app –
- Gilmour: - A rule problem.
- Gablks: We have a rule problem and let's say we want to deny a license under ORS 462.075, that would be a license application. What would happen is you would give them a notice of proposed action as the action would be to deny the license. If they wanted to appeal, then it would go to the Office of Administrative Hearings. They would have the appeal and then we would get the recommended order.
- Gilmour: A process.
- Gablks: Yes. Basically what this says is we're just cutting out the Board of Stewards. It's really going to start with the commission. You would have to do the Notice of Proposed Action and up the line. If they didn't ask for a hearing, we default them, if they ask for a hearing, we go to hearing, just like normal.
- Gilmour: That was the last page.
- Thorne: That was the last page. With that I would move that we approve these rules as read with the changes as delineated.
- Gilmour: That's the motion?
- Thorne: Yes.
- Gilmour: Is there a discussion among the commissioners on this proposed rule change.
- Davis: Second, I'm sorry.
- Gilmour: You're okay.
- Davis: Yes.
- Gilmour: She's okay. Those of the opinion that we should adopt the new rules as stated and gone over will say aye.
- Davis: Aye.
- Thorne: Aye.
- Metcalf: Aye.
- Johnson: Aye.
- Gilmour: Aye. Those opposed, no. The aye's have it.

ACTION: MOTION (Thorne) Adopt the proposed Hub rules as amended.

VOTE: 5 Aye, 0 Nay

Gilmour: Last. When will these rules, Kelly, take place.

Gabliks: Its' the same thing as with the medication rules. We now approve them, they technically become effective as soon as we file them with the Secretary of State's office unless otherwise indicated.

Gilmour: Give me a date. May 1st?

Gabliks: I look to the commission to decide, literally we can have them to the Secretary of State's office tomorrow.

Tallman: I would recommend, since we have ADW's operating under their current laws and rules and licensed under those current laws and rules, that this go into effect, effective the next fiscal year beginning July 1.

Gilmour: Let's ponder that.

Tallman: In other words, we're not changing the rules during the licensing period.

Gilmour: But, is there any changes of these rules that would effect their current, current licensing business. Most of these rules change the new license. The reason I'm asking this question is because if we get, hypothetically, an application for a new license within the next hour, will they operate under the old rules –

Tallman: - I can address that.

Gilmour: - for the full term of a year or for the end of the biennium?

Tallman: Actually, the application before us was based on the new rules, so they have met all of their requirements of the new rules. If we set a date certain, prior to July 1, what I'm looking for is, the folks who already got a license under the old rules are allowed to operate under that license as structured until the next licensing period.

Gilmour: I'm personally okay with that. Legally, are we okay with that?

Gabliks: Is that the intent? Is that what you want the intent of the commission to be?

Gilmour: Yes.

Gabliks: Then you would want the rules – because as soon as the rules go into effect they're subject to the new rules. If it is your intent to allow the current licensees to continue to operate under the current rules, then you should not have the new rules go into effect until their license expires.

Tallman: July 1 would be when the new rules would take effect.

Gilmour: Let's make it June 30th at 5:00 p.m.

Davis: That's also –

Tallman: - I don't know if that causes any legal issues or not as a technicality. We might be better off going with July 1 because that's the new licensing period.

Gabliks: That would be my legal preference.

Tallman: I would also –

Gilmour: - I'd like to have them in effect before –

Thorne: - Why don't we do 12:01 a.m. July one (1)?

Gabliks: Yes.

Tallman: Bear in mind we will also be getting applications prior to July one (1). I think that we need to state for the record that those applications, if they are approved, they are approved subject to the new rules that go into effect July one (1).

Gilmour: Gordon, you've got exactly where I was going.

Thorne: Good job, Gordon.

Gabliks: That may be where you want to go, but I don't think you can go there because if the rules aren't in effect, then you can't make people subject to rules that are not yet effective.

Tallman: But their license app. won't go into effect until July one (1).

Gabliks: So you won't –

Tallman: We won't be imposing new rule.

Gabliks: Are you telling me you will not approve their license to go into effect until July first?

Tallman: That's correct. Their license application they submit it prior to July one (1), but the application is for July one (1) to June 30th.

Gabliks: It will be for the time at which the new rules will be effective?

Tallman: Correct.

Gabliks: Then, I'm okay with it.

Tallman: Great.

Gilmour: Despite the fact that, hypothetically, we approve their new apps. prior to the new rules taking effect. Some smart lawyer in the back of this room is not going to make an argument that he or she got an application approved by the commission prior to July one (1) which takes effect July one (1) so they should operate under the old rules. I'm heading off lawyer expenses.

Davis: I'll put this out here – don't try that because we can revoke licenses and so if you're going to try and fudge like that you're not going to be successful.

Gilmour: We've had this discussion on the table and everybody is fully aware of the circumstances.

Gabliks: Mr. Chair, I guess, what I'm asking you is: Is Mr. Thorne making a motion –

Gilmour: - Yes, he is.

Gabliks: - that these new rules are going to go into effect at 12:00 a.m. July first, 2007?

Gilmour: That's right.

Thorne: Actually, 12:01 [a.m.] would be my motion.
Gilmour: With the understanding of the discussion we've had, for the record, right now.
Gabliks: I think that would be a great motion.
Gilmour: Any objection to that motion? Hearing none, so ordered.

End Transcript.

ACTION: MOTION (Thorne) The newly adopted Hub rules will become effective at 12:01 am on July 1, 2007.

VOTE: 5 Aye, 0 Nay

5. Churchill Downs Technology Initiatives Company 2007 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License

Brad Blackwell, Deputy General Counsel for Churchill Downs, Inc. and Vice President Legal for Churchill Downs Technology Initiatives Company (DBA: Twin Spires), and Kevin Flannery, Vice President of National Public Affairs for Churchill Downs, Inc., were present to answer questions. In response to the Commissioner's questions, they provided information that included the following:

A source market agreement had been reached with Portland Meadows and they will keep the Commission informed as they continue to negotiate source market fees on a case by case basis throughout the country at the various tracks.

The handle tax option chosen is for an eighth percent up to the first 60 million and a quarter percent after that first 60 million.

Pari-mutuel wagering is legal in all of the states that they are doing business.

They are contracting with US Off-Track to host their call center here in Oregon. Whether they will specifically have an office in Oregon, is something that they are open to after hearing the discussions today. He stated that their main objective is to comply with Oregon's regulations and rules.

They have no plans at this time to offer robotic wagering.

While their target date is April 1st, they plan to complete a test run prior to formally announcing their official opening date.

⇒ Interim Executive Director Tallman explained that while this license will begin in April, it will expire on June 30, 2007 and they will have to reapply for the July 2007 to June 2008 licensing period.

⇒ Interim Executive Director Tallman recommended approval of the license application with the condition that the tote equipment be installed in Oregon prior to their taking any wagers.

ACTION: MOTION (Metcalf) Approve the application as submitted with conditions as discussed.

VOTE: 5 Aye, 0 Nay

6. Allocation of Hub Funds for 2007 Summer Race Meets

The following is a transcript of this agenda item.

- Tallman: The way that our budget works and in terms of how we can distribute hub funds has caused some confusion, I think, for the industry as well as for the Commission itself. We receive a report that gives us allocations and it tells us, basically, how much we can spend from the hub money. Even if there's more revenue coming in than that, we can only spend what we're allocated. As each new quarter comes along, if we need to, there are steps that we can take to allow additional monies to be calculated into the allocations. But we start each biennium with eight quarters and with a specified allotment. I think that's important for everybody to understand because sometimes folks see the Hub money coming in and they wonder why we can't grant more allocations. That's why; because we are restricted by our budget and the allocations that we've been granted subject to any special allocations we may request or e-board request that we may make.
- What you have here is something that Carol and I have worked on. Carol came up with this format and I think it's very helpful. It allows you to see what the allocations are for the eighth quarter and then I also gave you the first quarter of the new biennium. What we need to get to is where we know what our mandatory expenses are. The things we have to fund per quarter and can help folks when they come to make requests to make sure that the allocations – that they don't request more than what's allocated for us to spend and we're always operating within our allocations and still meeting the needs of the racing industry. Does that sum it up for you, Jeff, in terms of the allocations?
- Gilmour: I'm okay with it. I just want to make sure everybody on the Commission and the audience understands. There's one thing you did miss. There is a magic date that happens every two years., That magic date is June 30th of every odd year which is the last day of the eighth quarter. Which means are books must balance for the state, for the allocation that the legislature has given us, for money coming in and money going out. It's always been the flexibility of this Commission in the past, to work within the first quarter to the eighth quarter of making hypothetical promises on distribution of money that we could cover during, for instance, the second quarter or third or fourth quarter. But when it comes to the eighth quarter, we're locked in to how much we can spend period. Period.
- Tallman: Correct.
- Gilmour: We are trying to balance the books every two years and so the 30th of this June of this year, we will balance our books. Leading to the next phase of your discussion, is the summer meet request which is basically in the eighth and the first quarter.
- Tallman: That's correct. It is divided between the eighth quarter and the first quarter because of the timing of the summer fair meets.
- Gilmour: To make it simpler, when I promise Ursula we're going to take care of you,' we're going to take care of you, but you might not get your check on the exact day that you want it.
- Tallman: I think the ultimate goal will be, when we get the allotments or when we get our allotment schedule, we start looking at mandatory expenses –

Gilmour: - Exactly -

Tallman: - so we can help those of you who come and make applications for the funds make the applications in a manner that you won't find yourself waiting for funds. We can have a little foresight and do some planning and actually approve things and allot money to come out as it's needed versus waiting. That's the goal.

Gilmour: That's the goal. Exactly. It should have been done. Go Gordon.

Tallman: Now we have the Summer Race Meet Budget.

Gilmour: Starting with the eighth quarter sheet.

Tallman: Yes, there are two sheets, eighth quarter and first quarter. To summarize it, what we are doing is: We are raising the summer race meet purses from \$2,000 per race up to \$2,200 per race. We are, additionally, funding a racing secretary and we added the position of assistant racing secretary which increased the cost of the racing secretary. We also are, and this is new, allocating \$30,000 as an operating expense supplement to Josephine County Fair for the Grants Pass race meet. As an incentive to the other race meets, we're offering a \$2,000 per day matching funds for purses. So if they go out and get race sponsorships, they've got an extra \$2,000 to work with to make the races –

Gilmour: - special races.

Tallman: Exactly.

Gilmour: Per day, not per race.

Tallman: Correct. Now if we could do [\$] 2,000 per race, Portland Meadows would be coming to us and saying, 'What's up?' Just to go over the – what you're seeing in addition to what I've described on this. We do have some fixed or mandatory costs built in for the eighth quarter and the first quarter. This sheet attempts to show you that. For the eighth quarter, we have for the OGA for the adoption kennel the May and June operating expenses to the tune of \$20,000. Also, the July - August because of when the funds need to be given to the agency, it's actually in the eighth quarter; [\$] 20,000 for July and August for a total of \$40,000.

Gilmour: Stop. When's the next schedule, Carol - quarterly, I think, that's what we have the adoption kennel on? Do you know the next time they make a presentation?

Morgan: My guess is at the April meeting.

Gilmour: Okay. I didn't want to have to have them go to Union just to make that.

Morgan: No.

Gilmour: Okay. Would you make sure that happens for me? Okay. Go Gordon.

Tallman: Additionally, we fund the video and photo finish services and you'll see that on there. The OQHRA had a request for the Grants Pass Derby, insurance for their Triple Crown and added money for the Firecracker Futurity. The Oregon HBPA had the request for summer fair stakes races and shipping horses to Grants Pass. That's [\$] 5,000 for the stakes and [\$] 6,540 for the shipping for a total of [\$] 11,540. With regard to the OQHRA request, that totaled [\$] 22,000. We also must fund the chemical tests, the Truesdail, and we've budgeted that at [\$] 25,000. That's what you're looking at for the eighth quarter. Any questions on the eighth quarter page before we go on to the first quarter? Okay. The first quarter, again, spells out the

cost that we will incur for the racing secretary and the assistant racing secretary; for the video and photo finish services and purses for all of the race meets; the September - October allotment for the adoption kennel; the jockey incentive program and the Truesdail testing.

Gilmour: Okay, is there any questions by Commissioners? Public comment on the Summer Race Meet Budget? Is there any public - Dick, come on up.

Cartney: I just have a question.

Gilmour: A question's okay. Comment or question, now's the time.

Cartney: Dick Cartney, Oregon HBPA, I just have a question with regard to the summer stabling issue that we've had a request for in the past. Is that included either in the eighth quarter or the first quarter?

Tallman: It's not apart of this, Dick, because it will come in the first quarter and we're only addressing the mandatory expenditures of the first quarter. It is on what I'm looking at in terms of a proposal for what we would spend of the allotment for the first quarter of the new biennium.

Cartney: Okay, so we'll still be able to request that?

Gilmour: We're not saying no.

Cartney: Okay, it is a very important part of the summer [unintelligible] –

Gilmour: - That's correct.

Tallman: Certainly. The calculated figure was, as you mentioned, going to [\$\$\$] 75,000 versus 60. It'll have to be formally done once our budget is approved and we have the allotment. You'll probably have to submit a formal request at that time.

Cartney: Will you remind me or let me know when that [unintelligible] –

Tallman: - I absolutely will.

Gilmour: When you don't get the check, you'll call, Dick.

Cartney: Thank you.

Gilmour: Okay, anybody else. Todd do you have a comment?

Thorne: I just have a question, actually? The OGA, what was our agreement with them in regards to how long that –

Gilmour: As long as they have dogs, that are?

Morgan: The dogs meet the certain requirements that were set up in the initial criteria as far as the whelping date and that we would continue to help support the adoption kennel until all of those dogs had been [unintelligible] –

Gilmour: - There's no new dogs coming into the kennel under new rules – there's no new rules. We're not getting new dogs in there. We're not adopting people's dogs off the street. They're all licensed dogs that's been in a process of –

Morgan: They pay for the registry that's why we [unintelligible]-

Gilmour: - Exactly.

Morgan: - pay for the registry.

Gilmour: That's correct. This will not go on forever.

Morgan: No, but some of these dogs do live for awhile.

Gilmour: Yes, they do. Okay, any other further comments?

Metcalf: Leah.

Gillmour: Come on up. Now, for the record, Gordon, while she's coming up, would you tell her how much we spent total last year compared to what we're spending this year. Not total, but –

Tallman: What I can say is: If you look at the eighth quarter expenditures which total over [\$] 523,000, [\$] 40,000 of that goes to the OGA and all the rest goes to the horse industry. Just for clarification.

Gilmour: The summer race meet schedule that we're looking at here exceeds the '06 summer meet schedule by what, [\$] 5,000?

Tallman: It would actually be more. I don't have the exact figure because we've broken it down and taken out some of the costs that we're built in the last year's costs.

Gilmour: If I can summarize, it's within a few thousand dollars of what we spent last year. Leah, for the record.

Nelson: I'm Leah Nelson with the Oregon Quarter Horse Racing Association. I just have a question and I've talked to Gordon about this on the telephone. But, I guess, I need to put it on the record. Traditionally, we have received \$10,000 for our Oregon Bred Futurity that typically in the past has happened in the fall. This year, our Board changed that. We renamed the race; it's now the Baxter Andress Oregon Bred Futurity. The finals will run on May the 5th at Portland Meadows. We want to request that [\$] 10,000 for this spring and we would not be requesting it in the fall because the race won't run in the fall. We also did this because we changed our Triple Crown around. We're beginning the Triple Crown in Grants Pass with the Firecracker [Futurity] trying to get more horses involved and then running the Portland Meadows Futurity, which typically was in the spring, in the fall and then the Far West race which is run in December. We've just switched things around –

Gilmour: - You're not requesting new money; you want it moved to a different race -

Nelson: - That's right, it's not new money. It's just moving it.

Tallman: Here would be the clarification because Dave and Leah did mention this to me. We're looking at funds that would have been allocated in the first quarter and trying to put them in the eighth quarter at the end of the biennium and that I do not believe we can do. What we can do is when we know our budget and know our allotment, we can address it as a back payment of the \$10,000. But we can't really change the time of your request because we're at the end of the biennium.

Nelson: Okay, but –

Gilmour: The good news is you'll probably get your money.

Nelson: Okay, just may not get it by May 5th.

Gilmour: That's correct.

Nelson: Okay.

Tallman: It would have to be after July one (1).

Nelson: I understand that. I just want to make sure –

Gilmour: We've allocated your money. The check's in the mail. You understand?

Nelson: Yes.

Gilmour: Okay. Any other - Rod, come on up. You drove all the way, you got to talk.

Lowe: Rod Lowe, representing Josephine County Fairgrounds, just a clarification: Because our race dates go from the eighth quarter and then the first quarter as far as the allocation and the payment to Josephine County Fairground for purses and everything, will it come in two separate entities?

Tallman: No, actually recognizing when you needed the funds, in your case, all of the funds for purses and video photo finish service was all accounted for in the eighth quarter. The only thing that's carried over to the first quarter is our cost for the racing secretary that is divided between the eighth quarter and the first quarter. But all the rest of your funding, as Carol was good enough to point out, you need that money to come to you during the eighth quarter so your entire meet is funded in the eighth quarter dollars.

Gilmour: You're luckier than the Quarter Horse people and you want to rub it in, right?

[Unintelligible]

Lowe: All for everybody.

Gilmour: Are you okay with this, Rod?

Lowe: I'm perfectly [unintelligible] –

Gilmour: - You're going to have a good race.

Lowe: I appreciate it. I thank you very much for everything. We're going to have a great meet.

Gilmour: Thank you. Okay, anybody else - Dwayne come on out.

Yuzik: Just a clarification.

Gilmour: Come on down, you know the rules. Portland Meadows is not on these sheets. Is that the clarification?

Yuzik: Dwayne Yuzik, Portland Meadows. Every twenty-four months or every eighth quarter, you mention that you're given an allocation on funds. What if your revenue exceeds your allocation from the state? And, if so, if your revenue is greater than your allocation, does that carry forward to the next biennium?

Tallman: What we are required to keep is a certain number of months reserve.

Morgan: [Unintelligible] payments.

Tallman: That's our total budget.

Gilmour: Let me give you the short answer. It's politics. If for some reason, we got 20 more hubs that came in here and we had an extra million dollars above and beyond what the state thinks we're going to get when they put their budget together, which they've done. It hasn't passed both houses yet, but I'm confident that the budget they put together that passed out of sub-committee and is on the way to the Senate will be the budget. What can happen is the Emergency Board meets every other month and you can request to have your budget adjusted. We have done that in the past to reflect income revenue and expenditures. The short answer is, in the next two years, we can make adjustments with what the state budget is depending on our revenue and our expenses.

Yuzik: When they do their budget, their allocations, is it done for the 24 months or the eighteen [unintelligible] –

Gilmour: -Yes, 24 months.

Tallman: -It is, correct.

Yuzik: I would think that they would be extremely shy on their projections for the biennium [unintelligible] -

Gilmour: -They have been.

Yuzik: - compared to the revenue –

Tallman: But there have been requests – there've been special allotments where the allotment amount has been raised during this biennium and there have been E-Board requests

where the allotment has been raised. We have asked for more money and it's been spent.

Yuzik: I was concerned [unintelligible] industry –

Gilmour: - No, that's fine. No hey -

Yuzik: [Unintelligible]

Gilmour: I want to spend all the money. Carol, come on up.

Morgan: Carol Morgan with the Racing Commission. I want to make one more small clarification. I don't want to get people having a bunch of false hopes. One of the things, we can go to E-Board. The other side of that is, you don't want to do that too often because it can come back and really bite you. What you have to do, and like Dwayne was saying, yes we have to figure out 24 months way ahead of time until we actually get there. Trying to project what our revenue's going to be and what are expenses are going to be are going to be very difficult. We have to be very judicious when we do go to the E-Board. We can't just do it every single time there's an E-Board. We really have to think that one out in advance.

Gilmour: Bingo.

Tallman: Well noted, Carol.

Gilmour: That's very true. Is there a motion for the Hub request for the summer race meet schedule as presented?

Thorne: I move to approve that request.

Gilmour: Is there any opposition to that motion? Hearing none, it's so ordered.

End Transcript.

ACTION: MOTION (Thorne) Approve the Hub Fund Allocation Request for 2007 Summer Race Meets as presented.

VOTE: 5 Aye, 0 Nay

At this time the Commission entered into Executive Session and upon their return continued the meeting with the following agenda item.

7. Action on Proposed Order for Michael L. Herod

ACTION: MOTION (Davis) Adopt the Proposed Order as the Final Order.

VOTE: 5 Aye, 0 Nay

8. Action on Proposed Order for Bradley C. Balcom

ACTION: MOTION (Thorne) Adopt the Proposed Order as the Final Order.

VOTE: 5 Aye, 0 Nay

9. Action on Proposed Order by Default for Jennifer A. Robbins

ACTION: MOTION (Davis) Adopt the Proposed Order by Default as the Final Order.

VOTE: 5 Aye, 0 Nay

10. Action on Proposed Order by Default for Gary C. Carroll

ACTION: MOTION (Davis) Adopt the Proposed Order by Default as the Final Order.

VOTE: 5 Aye, 0 Nay

11. Confirmation of Next Commission Meeting – April 19, 2007

All Commissioners indicated that they would be present at the next meeting or would otherwise notify staff.

12. Legislative Update

Chair Gilmour announced that the Commission budget passed out of the full Ways & Means Committee, and after it passes out of the Senate, will then go back to the House for a signature. He requested information on any other proposed bills currently before the legislature.

⇒ Dick Cartney, Oregon HBPA, provided the following update on their three bills that are continuing to move forward.

a) **Senate Bill 439**, regarding the medication change from after entry to 24 hours before post time, passed out of the Senate with 27 votes for and 3 excused.

b) **Senate Bill 441**, regarding the hub funds going to the racing industry, received a due pass recommendation and will go to the Ways and Means Committee next.

c) **Senate Bill 747**, pertains to un-cashed vouchers that they hope to use for benevolent purposes, has been introduced and referred to the Education General Government Committee.

Mr. Cartney stated his appreciation for all of the support from the Oregon

Racing Commission, Commission staff and the other racing organizations regarding these bills.

⇒ Judy Rosensweig, on behalf of US Off-Track and the AGTOA, stated that the Treasury Department would be issuing a draft of regulations for the Unlawful Internet Gambling Enforcement Act within the next 45 days. She recognized that the Commission had issued a Press Release in December 2006 in response to the federal act confirming that Oregon's Account Wagering Hubs were not in violation of it. In the event that the new regulations would negatively impact the current operations of the Account Wagering Hubs in Oregon, she requested that the Commission assist them in their efforts to get the regulations amended.

→ Interim Executive Director Tallman stated that the Oregon Racing Commission's Press Release *is* the Commission's position and statement. In an effort to avoid any legal matters regarding the Commission formally lobbying the issue, he has advised the hubs to submit their letter of recommendation for the rules and attach a copy of the previously approved and issued Press Release which reflects the Commission's position.

→ Chair Gilmour explained that per law, the Commissioners cannot become lobbyists, but they can issue a Press Release about their interpretation of the law. He added that the Commission would be willing to ensure that the Congressional Delegation received a copy of the Commission's Press Release.

→ AAG Kelly Gabliks stated that if the legislature asked the Commission questions, it could then provide information that answered those questions. She further explained that the Press Release issued in December '06 was in response to the Commission being specifically asked how the federal act would impact Oregon business. She added that before the Press Release was issued, it had to be approved by the Department of Justice because they were providing a legal interpretation. They were able to do that because it was believed to be informational and believed to be necessary to ensure that the federal act did not discourage Oregon business.

13. Selection of the Interim Executive Director

ACTION: MOTION (Thorne) Appoint Gordon Tallman as the Interim Executive Director

VOTE: 5 Aye, 0 Nay

14. Executive Director Search Sub-Committee

Chair Gilmour appointed Commissioner Kerry Johnson as Sub-Committee Chair for the Executive Director Search. Commissioner Julianne Davis also agreed to be on the committee.

15. Public Comment

None

There being no further business, the meeting was adjourned.