

OREGON RACING COMMISSION

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Special Teleconference Commission Meeting
June 28, 2007

Individuals below are listed in order of speaking:

Jeff Gilmour, Chair, Oregon Racing Commission
Kerry Johnson, Commissioner, Oregon Racing Commission
Stephen Walters, Representative, MEC Oregon Racing, Inc.
Kelly Gabliks, Assistant Attorney General, Oregon Department of Justice
Carol Morgan, Program & Administrative Coordinator, Oregon Racing Commission
Todd Thorne, Vice Chair, Oregon Racing Commission
Lisa Metcalf, Commissioner, Oregon Racing Commission
Julianne Davis, Commissioner, Oregon Racing Commission
Gordon Tallman, Interim Executive Director, Oregon Racing Commission
Dwayne Yuzik, General Manager, Portland Meadows
Dick Cartney, Executive Director, Oregon HBPA
Ursula Gibbons, Executive Director, OTOBA
Jill Miller, Supervisor of Mutuels/Auditor, Oregon Racing Commission
Dave Nelson, Oregon Quarter Horse Racing Association

Following is a transcript of the meeting:

Gilmour: Okay, it is 11:08 [a.m.] by my clock and we're going to call this Oregon Racing Commission to order on this Thursday, the sixth month, 28th day. We met last week and we took no action on anything that came before us last week. And so, this week we're back; we still have some of the same issues. We're going to go into executive session pretty quick to consider information on records that are exempt by the law from the public inspection pursuant to [ORS] 192.660(2)(f). But before we do that – and we are all here, I'm assuming Todd and a ...

Johnson: Kerry's here.

Gilmour: Ms. Johnson are still on the line. We've been handed an agenda which is virtually the same one as we had last time, I do believe. Before we go into executive session, Mr. Walters is here with us and I'm going to extend the same invitation to him as I did last time for any opening comments before we go into executive session. Mr. Walters?

Walters: Thank you, Mr. Chair, members of the commission. For the record, I'm Steve Walters representing MEC Oregon. Our position and request with respect to the matter that is before you in this portion of the meeting relating to rule making

proceedings is the same as it was last week. I'll be more brief. It is simply that with respect to these rules there is a legal disagreement between the attorney general's office and Magna - MEC Oregon regarding the legal basis for these rules. Magna will give whatever assurances the commission needs or requires that no Instant Racing will be implemented or no further steps will be taken to implement Instant Racing during the time that this legal dispute is being resolved through either administrative proceedings or judicial proceedings or a combination of the two. Given that fact and the fact that we are at a stage of a simple disagreement as to the law regarding the validity of the rule, it may be invalid, it may be valid, that we would request that you take no action to suspend or to repeal these rules for a variety of reasons I mentioned last week, including the fact that if we are right, we would like the ability to be able to implement Instant Racing much sooner rather than later. I know there are options, such as temporary emergency rules, but we see no reason to go through that with the assurances that Magna is prepared to give to you and we see no harm to the public interest or no purpose served by suspending or repealing the rules at this time. So thank you, Mr. Chair, for the courtesy.

Gilmour: You bet. Are there any questions of Mr. Walters? Okeydokey. Thank you very much. Kelly, rebuttal or any other thing –

Gabliks: Oh, no. We'll talk about it in executive session.

Gilmour: I knew that, but sometimes you like to say something anyway.

Gabliks: No.

Gilmour: I was just being courteous.

Gabliks: Thank you.

Gilmour: Carol, we're going to go into executive session and so we will –

Morgan: The time?

Gilmour: And the time is 11:11 [a.m.].

At this time, the commission entered into executive session and upon their return continued the meeting:

Gilmour: Here's what we're going to do. We've been in executive session. We've been discussing several different issues. We came to no conclusion or a vote during that particular time. We are back now in regular session and the first item will be on the first page, that I'm announcing the time: the time now is 12:25 [p.m.]. Okay. The first item on the agenda, I believe, is action to initiate temporary rule making to suspend OAR 462-200-0630. Is there a motion to do that?

Thorne: May I make a statement first?

Gilmour: No.

Gablks: Sure.

Gilmour: Yes. Sorry.

Thorne: Just for the record, in regards to the issue we're considering here: It's my thought that there is a direct conflict between what's good for the racing industry, including but not limited to live racing, and what is being advised by counsel as a matter of law.

Gilmour: Okeydokey. Thank you very much. I apologize. Now, do I have a motion?

Metcalf: May I echo his sentiments?

Gilmour: Commissioner Metcalf?

Metcalf: I feel absolutely as you do, as I think most of the commission does, that it is under the advice of counsel that we regrettably, many of us regrettably, vote the way we are about to.

[Unintelligible]

Gablks: Was that Kerry?

Gilmour: Kerry, are you there?

Johnson: Yes, I am.

Gilmour: Thank you. Okay. Now, do I have a motion on the temporary rule action?

Metcalf: I move to temporarily suspend OAR 462-200-0630.

Gilmour: There's the motion. I'm going to call roll. Commissioner Johnson?

Johnson: Aye.

Gilmour: Commissioner Thorne?

Thorne: Aye.

Gilmour: Commissioner Davis?

Davis: Nay.

Gilmour: Commissioner Metcalf?

Metcalf: Aye.

Gilmour: Chair votes no; the motion has passed.

Davis: I want to make a statement, as well. The commission has been advised by counsel that it exceeded, it likely exceeded its authority in adopting OAR 462-200-0630. I have carefully considered this advice of counsel. It is advice that was not requested by the commission, and on balance and consideration of all of my duties as a commissioner, as a member of the bar, and as a state official, I still vote no.

Gilmour: Okay. Number "C", I believe. Having announced the vote, it is three to two on the temporary. Now, we'll move to permanent rule making. Ms. Metcalf?

Metcalf: Don't you have to ask if there's a motion?

Gilmour: Yes, Ms. Metcalf, do you have a motion on the permanent rule making?

Metcalf: Yes. I have a motion for the staff to begin permanent rule making to repeal OAR 462-200-0630.

Gilmour: Is there any discussion on that motion? Hearing none, I will call an oral vote. Commissioner Johnson?

Johnson: Aye.

Gilmour: Commissioner Thorne?

Thorne: Aye.

Gilmour: Commissioner Davis?

Davis: Nay.

Gilmour: Commissioner Metcalf?

Metcalf: Aye.

Gilmour: The Chair votes no; the motion has passed three to two. I believe it's time for lunch. We will stand in a lunch break recess until the afternoon session to begin at "oneish". Thank you. The time is 12:29 [p.m.].

Upon their return from a lunch recess, the commission continued the meeting:

Gilmour: Good afternoon, the Oregon Racing Commission will come into session on the sixth month, 28th day, it's 1:07 [p.m.]. We have met today in executive session and we came back out of executive session and we have initiated a couple of rules. And, I think at this time there's one thing left on the agenda, actually there's two things left on the agenda. One is not printed. The first item on the agenda is the action on the Portland Meadows '07-'08 Race Meet application. Is there a motion to defer this application?

Gabliks: Do you want to have discussion first?

Gilmour: Yes. Is there a motion to defer?

Thorne: So moved.

Gilmour: Commissioner Thorne moves to defer action on the Portland Meadows '07-'08 Race Meet application. Now, is there discussion among the commissioners? Miss Davis?

Davis: I have a question for our counsel.

Gilmour: Perfect.

Davis: If by deferring taking action on this application, it's my understanding that the current application remains in effect. Am I correct?

Gabliks: That is correct.

Davis: All right, thank you.

Gabliks: It is not "deemed to have expired" is the exact language from the statute.

Davis: Thank you.

Gilmour: I have a question of our counsel. Have you reviewed the discussion about a deferred license, now that we have initiated rule making to repeal, which - part of that rule was in their past license? So, my understanding is since we have initiated rule making to suspend that particular element that was in there '06 -'07 license, your opinion is that the rest of the license is whole, except for that part.

Gabliks: Correct. Actually, if I could correct you, what the commission did was they adopted a temporary rule that suspended the operation of OAR 462-2000-360 [OAR 462-200-0630] on a three to two vote and then voted to instruct staff to begin permanent rule making which would repeal that rule.

Gilmour: Okay.

Tallman: Just for clarification, it's zero--

Gilmour: Who are you?

Tallman: Gordon Tallman, Interim Executive Director; zero, six, three, zero [OAR 462-200-0630].

Gabliks: three, zero, okay, if I forgot to put in an extra zero.

Gilmour: Okay. So, have you had time to review other implications of having Portland Meadow run for a length of time knowing that the temporary rules only are in existence for 180 days. And, I am assuming that we will start rule making proceedings prior to that -- That, under their current license, which normally they do generally race in what? The month of October and the month of November and the month of December and January; that under their current license which they will be operating under, is there a requirement, in your opinion, that they should have live racing to meet the simulcast rules?

Gabliks: That is an issue that I am taking under advisement and I'm not willing to provide you with my final answer. The only thing I would be willing to say, Chair Gilmour, is that when that question was posed to counsel for Portland Meadows, he stated his understanding that Portland Meadows would not be obligated to offer live racing during '07-'08.

Gilmour: Okay.

Gabliks: But, certainly you can -- that's certainly a question that the commission can ask anyone from Portland Meadows if they so choose.

Gilmour: As the audience and other commissioners are probably aware, I'm trying to find the crystal ball and get some of the things that need to be on the table at this venue so that we all have a perspective of, hypothetically, the loss of live racing at a commercial form during the '07-'08 race season. And, there's a lot of heavy hearts throughout the industry and on the commission with that possibility. And, I wanted to make sure that that was adequately discussed at this meeting. Are there any other questions or discussion among the racing commissioners?

Davis: I was wondering --

Gilmour: Ms. Davis?

Davis: Chair Gilmour, if you're going to inquire of Portland Meadows or Magna, what their plans are for live racing?

Gilmour: I would invite, at this time, even though we do have a motion on the floor, since there has been the question: If Magna and Portland Meadows would like to, for the record, add any insight to their thought to operate on the '06-'07 license which we are deferring any action on the new one, but you'll be operating under the old one, if you have any insight with your intentions under this scenario that we've laid out. You are not required to put anything on the record, if you don't want to, but at this time you have an opportunity. Dwayne?

Yuzik: Dwayne Yuzik, Portland Meadows, at this time, do not wish to comment.

Gilmour: Okay, any further discussion? There is a motion on the floor to defer action on Portland Meadows '07-'08 Race Meet application made by Commissioner Thorne. I'm going to be calling an oral roll call on this motion. Commissioner Thorne?

Thorne: Aye.

Gilmour: Commissioner Davis?

Davis: Aye.

Gilmour: Commissioner Metcalf?

Metcalf: Aye.

Gilmour: Commissioner Johnson?

Johnson: Aye.

Gilmour: Chair votes no; the motion has passed by four to one. Is there anything the commissioners have on the agenda, left? Okay, I believe, that is all that we have for this commission meeting.

Cartney: Mr. Chairman, before you conclude, could I ask a question?

Gilmour: Yeah, I forgot about that. We usually do have public comment at the end of the commission meeting. So, I'm going to open it up to public comment. You remember the rules?

Cartney: I think so. Dick Cartney, Executive Director, Oregon HBPA, I guess I have two questions about the action you've just taken. Number one is: You deferred the license. Do you have – you've deferred it until when? Do you have a timetable for when it's going to be addressed again?

Gilmour: I'm under the impression that since we have deferred a license that it is still on the table as far as something, a motion, or whatever, that has not passed. I'm guessing that in most meetings, it's always on the table for a revisit.

Cartney: Okay, because I don't think I probably have to tell anybody in this room how critical it is for horsemen, for the breeding industry to know whether or not we have a race meet because horsemen make their plans to race many months in advance. We may have people sitting out there saying, look if this thing is under a cloud, we're going somewhere else. So, it's going to have a serious impact on this race meet. So, I think it's critical that we come back and address this thing at the earliest possible moment. The second question I have would be for Ms. Gabliks: You said you're not ready to make your final determination on whether live racing is required by law which, I'm certainly not an attorney but I think there is some language in there that would indicate it is, but when will you have your final determination and what process do we have to – can we at some point weigh in on that decision or have a legal opinion, have someone advise us on that and perhaps make an argument on our side?

Gabliks: You're always free to provide the commission with any kind of information that you want. So, you're certainly free to provide that information which the Department of Justice will consider in advising the commission and the commission members. I don't have an official timeline and when I ultimately provide that advise it will - although my sense is that the commission would act consistent with it, it would be something that's for private consumption and not public consumption and - because it may or may not necessitate additional action.

Cartney: Okay, I guess my only comment would be to repeat exactly what I said before: Time is of the essence here. It's serious to the entire industry, not just the race meet, but all the horsemen that participate in horse racing in the State of Oregon. So, I urge everyone to try to - what ever the problems are, we need to have resolutions to them sooner rather than later.

Gabliks: Well, and I think in – Mr. Gilmour did not say that, but the Department of Justice has been meeting with Magna representatives and so, in part, allowing the license action to be deferred will allow the sides to try to get together to resolve this as expeditiously as possible.

Davis: Yes, and I just - I want you to know that we recognize – this is Commissioner Davis – that we recognize the seriousness. We're doing everything we can.

Gilmour: Your comments have not fallen on deaf ears.

Cartney: Thank you. I was – I kind of figured you guys knew what was going on, but I just needed to be on the record as to letting you know what the position of the horsemen is on this issue.

Gilmour: Well, I've been dancing on the head of a pin on several different points with this, being Chair of the commission. And so, I'll continue that dance, but I would point out that the last few special meetings have not been pleasant. The action that we have taken has not necessarily been one that the commission or members of the

Commission have sought out. We have been taking a requirement of our legal advice to go in the direction that a majority of the commission has taken.

Cartney: For the record, I appreciate your comments, Mr. Chairman, and I understand that these are not easy decisions to make and, you know, we're all, I think we all want the same thing. We want to have horse racing in this state. So, we appreciate your efforts today and we'll continue to work with you. I just encourage everybody to try to work these things out as quickly as possible.

Gilmour: The Racing Commission in its formation and its charge is lacking an element that I've always suggested that somebody should put in the statute and that lacking is the fact that we are not promoters of the industry as in statute. And, I believe what we've been trying to do over the last five, six, seven years is do what we can, within our ability, to promote the industry. And, I was hoping, as long ago it seems, is a year ago, that the industry had hopefully turned a corner on several aspects, particularly horse racing then was starting to come back. It is not a bright day and particularly at this meeting. Any other public comments, for the record? You must use a mic and identify yourself, Ursula.

Gibbons: I – Ursula Gibbons, Executive Director of Oregon Thoroughbred Owners and Breeders Association, I just want a clarification. I need to go back to my organization, my board members, today is a closing day for our sale. We have breeders in Oregon and potential consigners of horses to our sale that are making business decisions about where to sell these horses. By deferring the Portland Meadows application, did I hear just now that the 2007 and 2008 live race meet may not happen? I mean they do not have to race live and so I need to go back and let these people know that so that they can make their decision.

Gilmour: Little point of clarification on that issue. I believe that there is a catch to it, but the statute does require 720 live races, number one, to have a commercial license. I'm under the impression that there is some negotiations between the track licensee and the horsemen that can take place of which that decision on change of that number is brought before the commission to make a final determination. I do not believe that this present commission would allow a simulcast without live racing. Okay?

Gibbons: All right. Thank you.

Gilmour: Just put it all on the table. And, I speak –

Gibbons: I mean there has to be hope or I can't go back in good faith and tell these people –

Gilmour: I understand, I understand, Ursula. This is not a bright day in Oregon racing.

Davis: And, you should know that our hands are tied.

Gibbons: I understand that, but so are mine.

Miller: I have questions.

Gilmour: We have public comment. You know, sometimes this is painful and sometimes people criticize me for having it, but I am a big believer that this is a public board and commission or whatever and we should hear from the public. So, follow the rules and you're welcome.

Miller: Jill Miller, Auditor for the Oregon Racing Commission, my question is in regards to the money. If we are doing a continuation of the current meet, we were intending to cut off on June 30th, and I know Ursula was ready to pay out people and so was Leah, what do we do with the money?

Gilmour: Don't spend it today. There are some technicalities such as the one you're bringing before us that we – I'm not sure there's a correct answer at this moment unless Gordon has something to add to that. There's a lot of things we haven't thought about, yet, you have to understand. And, where this commission does not have the latitude of a PR person to put out press releases and get all of your answers, Gordon will be available to come up with the best answer he has and if he has a question, Gordon does contact all of the commissioners to run everything by them so there's a general understanding of where we're going; what we're doing. I hope that answered your question, at least at this moment.

Davis: You should also know that this is a relatively new issue for the commission. It was something that we haven't been struggling with for very long because it wasn't made known to us until maybe three weeks or so – I can't remember exactly when. It involves complex legal issues, the intersection with our rules and regulations with the rules and regulations affecting other agencies. It wasn't a fight we asked for and so there's lots of stuff out there that we haven't thought through, yet. But, we will.

Gibbons: From the receiving organizations –

Gilmour: Who are you?

Gibbons: Ursula Gibbons, Executive Director, we can always do a second payment, but horsemen –

Miller: But do we apply it to what race meet?

Gibbons: Well, that's what I'm saying if we were to go –

Gilmour: Gordon, why don't you intercede –

Tallman: Well, I guess the short answer I would say to Jill's question, sorry, the short answer I would say to Jill's question is: Nothing has changed with regard to the scheduled

payments. By going to the fiscal year, we're still completing the fiscal year normally. So, you would still do your payments as planned and scheduled. The question that will have to be determined in the future, but moving forward, ongoing with the current license, I would assume that the funds are still accumulating as they normally would. But, we will have to watch on the distribution and that's a question we'll have to answer when we know what the state of live racing will be at that time.

Davis: And, I have a question for the horsemen of any organization that's here and that is: Probably today is your drop dead date, but what is your absolute drop dead date that you have to know before?

Gilmour: Spoken only as an attorney [unintelligible].

Gibbons: We're talking about a sale that we're holding in October and for those people, we have a drop date when we start spending a lot of money putting the sale catalog together. We're – mid July.

Davis: I just urge our counsel to take that back into considerations and discussion with other –

Cartney: I can add a few comments for that. Dick Cartney, Executive Director, Oregon HBPA. Actually the impact, I believe, will be immediate as soon as word filters out on the action that was taken today. We've got horsemen that have young horses that need to be – they're probably not going to bring them in and start putting them in training and start putting expense into them if there's a question about whether or not their live racing is going to be available. We're going to have horsemen that are going to go somewhere else and they'll start planning that immediately.

Unknown: Trainers.

Cartney: So, you know, there is some time. We normally open the barn area 45 days ahead of the meet, but believe me the impact will be - start much earlier than that.

Davis: Can you make sure that anytime you feel any impact that you immediately get that information to Gordon or one of the commissioners?

Cartney: Sure, be happy to.

Nelson: Dave Nelson, Oregon Quarter Horse Racing Association, let me just add that the first leg of the Oregon Quarter Horse Racing Association's Triple Crown race will run next Wednesday and so, that's a commitment that's begun. And so, if we cancel the second two legs at Portland Meadows in the fall, that's going to be loss of money as well as loss of horse racing opportunity. And, as Dick said, trainers will move and start looking very quickly for places to move in the fall, generally to the South.

Gilmour: Any further – excuse me, Jeff Gilmour, Chair, currently, are there anymore public comments at this time before I close the meeting? Going once, going twice. The commission meeting scheduled for today the sixth month, 28th day will adjourn at 1:28 [p.m.].

End Transcript.