

Washington Horse Racing Commission
Meeting Minutes
June 14, 2019
9:30 A.M.

Present were: Dr. Everett Macomber, DVM, Chairman; Robert Lopez, Commissioner; Dr. Claude Ragle, DVM, Commissioner; Representative Joe Schmick, Legislative Ex-Officio; Suzanne Becker, Assistant Attorney General; Doug Moore, Executive Secretary; Patty Brown, Confidential Secretary.

Item #1. Approval of the meeting minutes of April 12, 2019.

Commissioner Lopez moved to approve the minutes of April 12, 2019 as submitted. Commissioner Ragle seconded the motion. Unanimously approved.

Item #2 Commissioners' report.

Commissioner Lopez reported on his attendance at the Association of Racing Commissioners International (ARCI) Annual Spring Conference, April 2-5, 2019, and was elected to be the ARCI Treasurer for this year. He had also attended Emerald Downs on June 2nd, and served as the Honorary Steward for and presented the winning trophy to the winner of the Governor's Stakes.

Commissioner Ragle had nothing to report at this time.

Chairman Macomber had spent most of time in occupational and physical therapy recovering.

Item #3. Industry Reports.

- a. Emerald Downs. Phil Ziegler, President, Emerald Downs, reported the Indian Relay Races would be held this weekend, he said they were expecting a really big weekend. He said there were 21 teams competing in the relays. Mr. Ziegler went over the payouts for the relay races. He said this would also be live streamed on Emerald Downs website. For Father's Day on Sunday they will be giving away free baseball caps. He said the weather is expected to be perfect. He said this would be the biggest weekend this year. He said everything is going well otherwise. He thanked Commissioner Lopez for being the Honorary Steward. Mr. Ziegler said he'd been a participant on the ESPN.com podcast and had spoken highly of the ARCI. He said the horse population is down a little from the same time last year, which is a struggle. Commissioner Lopez asked Mr. Ziegler if with horse population down would it be more profitable to run fewer races with more horses. Mr. Ziegler said, mostly it's better to run seven races and that's enough, it works well with the population. Chairman Macomber what is the horse population and Mr. Ziegler said there was 862 on the grounds.

- b. WHBPA report. Pat LePley, President, Horsemen's Benevolent and Protective Association (HBPA) reported he'd spent a lot of time monitoring the Santa Anita situation. They've been working on condition books; working with race office. Spent some time working with Mr. Moore on issues that have come up; working on Sports Wagering bill; and other items that might help down the road. The biggest concern is the horse population; a lot of horses left California, and we do draw them here, but we're not getting those horses at the present time due to the Santa Anita controversy. Another problem is Portland Meadows is gone; what a blow that is to lose that operation, which kept horses in the area. Ms. O'Connell, Executive Director said the HBPA annual general meeting is to be held on June 29th and hoped one of the Commissioner's would be able to attend. Mr. Moore asked what time the general meeting starts. She said 12:30 P.M. for lunch and the general meeting would start at 1 P.M.
- c. WTBOA. Dana Halvorson, President, Washington Thoroughbred Breeders and Owners Association (WTBOA) reported they had closed the nominations for their sale on August 20 and have about 115 nominations with 26 horses from California. He said their annual membership meeting is on July 13th. It is an afternoon meeting and they will have more information on their website coming soon. Ms. Anne Sweet, Editor Washington Thoroughbred, said that same weekend is the Equine Art Show and there will be a viewing on Thursday July 11th. Chairman Macomber asked about the art works. Ms. Sweet said they've got about the same amount as usual; about 200 pieces in all categories; adult to children. Chairman Macomber asked how the breeding season was looking. Mr. Halvorson said they had lost the top sire, which is a big blow. He said with Breeder awards down substantially, he said they would have to see how it goes.
- d. Sun Downs report. Mr. Moore said he will report on Sun Downs in the Executive Secretary's report.

Item #4. ADW license renewal – TVG (Action Item).

Mr. Moore presented the renewal application submitted by TVG. Mr. Moore said TVG on May 9, 2019 received a \$5,000.00 fine by the NY State Gaming Commission for receiving wagers on Easter Sunday in violation of NY State Racing, Pari-Mutuel Wagering and Breeding law. Mr. Moore said staff recommended approval. Mr. Tom Cassidy of TVG was present to answer questions.

Chairman Macomber asked Mr. Cassidy, if the fine had been settled, Mr. Cassidy was not aware but believes has been settled. Mr. Cassidy said they are seeing growth in industry, he said they are utilizing good marketing and getting results; money back specials gives them the incentive to look somewhere else and check out other racing and wagering options. Commissioner Ragle asked if there was anything else not contained in the renewal package that Mr. Cassidy would like to comment on. Mr. Cassidy said nothing that he knew of. Chairman Macomber asked how TVG was promoted and Mr. Cassidy said they have a webpage detailing promotions and on the TVG networks. Commissioner Lopez asked Mr. Moore about the July 26, 2020, Emerald Downs agreement with TVG ending on May 31, 2020; the ADW renewal is through July 26, 2020; Mr. Moore said he would monitor the Emerald Downs agreement and ensure a new agreement is received when executed.

Commissioner Lopez moved to approve the renewal application for TVG. Commissioner Ragle seconded the motion. Unanimously approved.

Item #5. Request to Modify Order 94-007 – Scott Bergsrud (Possible closed session).

Mr. Moore reviewed the request from Mr. Bergsrud to modify WHRC Order of 94-007. Mr. Moore identified support letters that had been received by the WHRC previously when Mr. Bergsrud was pursuing a license in another jurisdiction. Mr. Moore said Mr. Bergsrud is now requesting to have lifted the ineligibility order to obtain a license in Iowa. He is basically requesting the ability to get a license and apply in other jurisdictions; to work elsewhere at race tracks. He currently resides in Ocala, Florida, and it is his intention to apply in Des Moines, Iowa. Mr. Bergsrud apologized for what he had done all those years ago. It was life changing and he felt he had paid a long price; learned a big lesson. He would like to be able to make a living at race tracks. Chairman Macomber asked if it was his intention not to apply in Washington, Mr. Bergsrud said yes; only other jurisdictions. Commissioner Lopez said if the Order was amended and included the statement he was not able to apply in Washington but was free to apply in other jurisdictions would that be sufficient. Giving the other jurisdictions to make a decision on a request to license him in their own jurisdiction. Mr. Bergsrud said he doesn't know with the ineligibility in Washington, but that would be acceptable, if other jurisdictions could consider to license him. Commissioner Lopez asked Mr. Bergsrud if he's been straight. He said yes, absolutely. He said he's ridden in Montana and Utah and worked hard. Chairman Macomber then closed the review session.

Ms. Becker, Assistant Attorney General said the Commission can take testimony on the two order modifications together, and make a decision after hearing Mr. Motschenbacher.

Item #6. Request to modify Order 88-1 - Terry Motschenbacher (Possible closed session).

Mr. Moore reviewed Mr. Motschenbacher's request to modify WHRC Order 88-1. Mr. Moore said the circumstances on Mr. Motschenbacher were in 1988 at Yakima Meadows, Mr. Motschenbacher was found to have participated in an attempt to fix the outcome of a race. This was reviewed by the Court of Appeals of the State of Washington and the WHRC order was reinstated revoking Mr. Motschenbacher's jockey license. Mr. Moore stated that Mr. Motschenbacher was not asking to obtain a license, but to be allowed in the public areas of the race track as a member of the public. Mr. Motschenbacher said he never went back to the race track, but started a carpet cleaning business in Spokane; he's since retired and would like to go to the races again. Mr. Motschenbacher said he was sorry about what happened and that it should never have happened. He would like to go and visit the race track, he has a lot of friends and that's about all he can say. Commissioner Lopez said you just want to go to the races and be the same as any member of the public; you are not asking to go to the backside at this time. Mr. Moore clarified that Mr. Motschenbacher stated that Mr. Motschenbacher said he may want to apply in Arizona as an owner; either Montana or Arizona.

Commission retired to Executive Session. 10:12 A.M. Reconvened 10:51 A.M.

Chairman Macomber said it was the decision of the Commission to continue the decision for Scott Bergsrud request to lift the ineligibility order 94-007, and continue until the next regular meeting on July 26, 2019, to receive more current information on Mr. Bergsrud, the information before the Commission at this time is 10-12 years ago and there is no current information presented. It is the request of the Commission to have Mr. Bergsrud submit to a current background check including a fingerprint check and receive more recent character references. There shall be no charge to Mr. Bergsrud for the background check. The Commission will reconsider the issue on July 26th.

Chairman Macomber said as to Mr. Terry Motschenbacher, his request to amend WHRC Order 88-1 has been granted to amend only the access to public areas of the grounds. Chairman Macomber said an order will be prepared and a copy will be mailed to Mr. Motschenbacher.

Item #7. Hearing before the commission: Dannette Countryman – WHRC 2019-004 (Possible closed session).

Chairman Macomber opened the hearing at 11:00 A.M.

Commissioner Lopez recused himself; he had in May 2008 represented staff regarding a hearing dealing with Ms. Countryman.

Mr. Moore presented the case for staff. Exhibits 1-11 were entered and admitted. Ms. Countryman was not represented by an attorney. Testimony was taken. Ms. Countryman was requesting a groom's license. Chairman Macomber closed the hearing. The Commission retired to executive session at 11:17 A.M. Reconvened 11:44 A.M. Chairman Macomber said it was the decision of the Commission to amend WHRC Order 2008-003 that permanently revoked Ms. Countryman and permit Ms. Countryman to the public areas of the grounds; she may apply for a WHRC groom's license, her application is remanded to the stewards for reconsideration pursuant to commission rules and policies.

Item #8. Adoption Hearing - WAC 260-70-630 Threshold levels (Action Item).

Mr. Moore said this amendment would correct an error discovered in the ARCI model rules. When updating the anabolic steroids thresholds in January, the language was inserted identically to the ARCI rules. After adoption, the testosterone threshold level in urine, it was apparent there was an issue. In communication with ARCI and Racing Medication and Testing Consortium (RMTC), it was discovered that the language in the model rule was recommended screening level for the testing labs and not the threshold level in urine. The model rules were amended at the April ARCI meeting and the proposed change to WAC 260-70-630 reflects the correction. No comments were received and staff recommends adoption.

Commissioner Lopez moved to adopt the amendment to WAC 260-70-630. Commissioner Ragle seconded the motion. Unanimously approved.

Item #9. Rule making 2020 – Overview (Discussion item).

Mr. Moore said the following sections that currently have been filed for possible rule making are:

WAC 260-20-090 association security. Mr. Moore said there seems to be a disconnect between WHRC authority to assist the association security in dealing with licensees behavior in the restricted areas. The goal is to give the stewards the authority to discipline those that continually ignore safety and conduct rules established by the Association, and to deal with those that become confrontational and disrespectful to the association security personnel. The WHRC does not enforce house rules and this would remain unchanged, but would allow the WHRC to support the association in their work.

Commissioner Lopez asked about a rule that states that licensees are required to observe house rules. Why don't have one in place. Mr. Moore said if there is a safety measure we will deal with it but the WHRC cannot enforce house rules, but would be looking at them for safety rules and conduct toward association security to try to add the language to support them. Chairman Macomber asked how would this improve support. Mr. Moore said if Security drafts a complaint, we cannot address it; this amendment will enhance our ability to help the association make licensees comply with the rules.

WAC 260-24 Association official and employees. Mr. Moore said this proposed amendment would be to review the duties of each racing official and update recent changes established by the ARCI model rules where appropriate.

260-28-295 Trainer responsibility. Mr. Moore said staff is proposing to add recent model rule language to require trainers shipping in horses to race to provide a fourteen day treatment record if asked for by the regulatory veterinarians. This would provide more information to the official veterinarians when conducting pre-race exams. This also places them on the same requirements as horses on the grounds whose daily treatment records are already submitted.

WAC 260-34 Drug and Alcohol testing licensees. Mr. Moore said the WHRC received a request from the HBPA to add both grooms and assistant trainers to the list of those licensees subject to random testing.

WAC 260-36-062 Fitness to participate. Mr. Moore said with the current knowledge of how concussions affect a jockey that has been involved in an accident, staff is investigating the capability of the agency to add as a condition of licensing the requirement that all jockey's provide a base line concussion test review prior to racing. Representative Schmick asked who would pay for that. Mr. Moore said that they would pay and the results would be provided to the Commission.

WAC 260-40-208 Impaired horses. Mr. Moore said at the request of WHRC State Veterinarian Dr. Ron Friedman, the change would prohibit a horse that has been heel nerved from participating. Knowing that heel nerving blocks feeling to the horses' hoofs, by not allowing a heel nerved horse to participate, it may prevent a catastrophic injury from occurring. Mr. Moore said he would be looking at other jurisdictions to see how they have addressed this along with stake holder comments.

WAC 260-52-045 The riding crop. Mr. Moore said at the request of Emerald Downs Racing, a solicitation for comments would be made with regard to adding a "strike count" to the existing rule on crop usage. Mr. Moore said it is being contemplated to add a three strike in succession rule may be appropriate.

WAC 260-60-300 Who may claim. Mr. Moore said he received from the HBPA an amendment to this section to prohibit a claim by any licensee who has outstanding debts related to their racing operation. Mr. Moore said more thought may be needed to see this can be enforced and what would trigger that prohibition.

WAC 260-70-545 Prohibited practices. Mr. Moore said he had opened this rule to study the feasibility of adding language on the use of Bisphosphonates; language prohibiting an "off label usage" with the main focus on use in horses under the age of four years. Mr. Halvorson said they had added language in the sales consignment that this is prohibited in yearlings.

WAC 260-70-685 Alphabetical listing of all drugs, medication, and foreign substances. Mr. Moore said this section needs to be review for changes or additions regarding the model rules recently. The last time this section was updated was 2017.

WAC 260-80 Prohibited practices. Mr. Moore said a new section would be added with language regarding safe practices in the stable area: fire prevention; vehicle usage; and may also include expanding other preventative measures.

WAC 260-84 Penalties. Mr. Moore said the penalty matrixes would be reviewed for accuracy or any omissions or changes on current rules.

Item #10. Agency Request Legislation. Mr. Moore said there are two pieces of legislation; one for action and the other is for discussion only.

Mr. Moore said RCW 67.16.100 needed to be amended to allow the WHRC the ability to ask for and receive money from the state general fund. It was Ms. Becker, Assistant Attorney General's opinion to strike the last sentence contained in the RCW in Section 1. Mr. Moore said this wouldn't necessarily mean the WHRC would get money, but would give the WHRC the ability to ask for it. The second part of this legislation is to allow handicapping contests to be offered by both the Class 1 racing association and advance deposit wagering firms licensed in the state. Commissioner Lopez moved to approve the amendments and move the legislation forward for RCW 67.16.100 Section 1; and RCW 67.16.251 Section 2 regarding who would be able to hold handicapping contests. Commissioner Ragle seconded the motion. Unanimously approved.

Mr. Moore said the next piece is on the National Medication Compact (Discussion item). He said this is the same legislation before the Commission that had been discussed previously. Mr. Moore said there is now a mirror companion bill in senate making possible federal legislation from both houses now. This has more steam than ever before and he wants to reach out to the stakeholders for a formal response on support or not and then bring this back before Commission at the July 26th meeting. Ms. O'Connell said there has not been a lot of movement on this compact. Commissioner Lopez said he thought that he'd heard that by joining the compact, it would alleviate the need for Federal regulation. Chairman Macomber said that this is no guarantee that this compact would do that. Mr. Moore said that with the 2020 legislative session being a short one; he was fine with tabling this and focusing on the funding legislation.

Item #11. Executive Secretary's Report.

Mr. Moore said he had a couple of housekeeping items; one is to approve travel to the Saratoga, New York, ARCI summer meeting in August for Commissioner Lopez, Mr. Moore said he would be participating by phone and would not travel.

Commissioner Ragle moved to approve. Commissioner Lopez seconded the motion. Unanimously approved.

Mr. Moore said June 23rd is Washington state legislator's day at Emerald Downs and would like to approve one or more commissioners the ability to attend.

Commissioner Lopez moved to approve. Commissioner Ragle seconded the motion. Unanimously approved.

Mr. Moore asked for approval, based on availability, to approve travel to attend the HBPA general meeting on June 29th, HBPA has asked Commissioner Ragle to attend. Commissioner Lopez moved to approve. Commissioner Ragle seconded the motion. Unanimously approved.

Commissioner Lopez also moved to approve his attendance and travel for the Governor's Stakes. Commissioner Ragle seconded the motion. Unanimously approved.

- a. Wagering Recap (April/May 2019). Mr. Moore reviewed the wagering by date range for April and May to be down .81 percent and 2.93 respectively. For race year down .08 percent. Regarding the ADW for March and April they are down 2 percent and 1.32 percent respectively. Mr. Moore said he thought this was due to cancelling races at Santa Anita. Mr. Moore said Sun Downs down 18.1 percent from last year. Due to a significant problem with horse shortages; there were only 58 thoroughbred horses on the grounds this year, and there were eight less races offered in 2019 from 2018.
- b. Monthly Financial Statement March/April 2019. Mr. Moore reviewed the expenditures and revenues for March/April 2019; the Fund Balance at the end of April is \$682,864. He said new projections from the WHRC Budget Analyst was that the WHRC will not see savings from the reduction of FTEs as had hoped. By the end of fiscal year 2020 the fund balance will be approximately \$407,448; by the end of fiscal year 2021, the fund balance is expected to be \$152,064. Even with all the cuts that have been made in every case possible, the WHRC has saved significantly on salaries, benefits and IT costs, but it is still not enough and will still need the legislation or we will not survive. We've already cancelled several contracts, curtailed travel, reduced test barn staff, not yet cancelled the campus mail, cancelled TRPB contract, reduction of overall staff and hours has already been implemented. In concert with budget staff, Mr. Moore has formed a decision packet that focuses on equine health and safety; the economic impact to state with racing and how the commission's ability to be fiscally positive will be a major point.
- c. He said they are sixty percent done with the decision packet. He said Kai Matthews, Budget Analyst, will be at the July meeting to discuss the decision package. Commissioner Lopez asked about the funding; vet staff and the testing program, the necropsy program costs are about \$320,000. Representative Schmick said to be sure to ask for personal stories from the stakeholders; that means more to Legislators. He said to include in the package information about retired race horses working with veterans; helping with post traumatic stress syndrome. Ms. O'Connell also said to talk about the race track personnel are unable to gain employable in other areas; the race track is all they know.

Item #12. Any other business that may be properly brought before the Commission.

Hearing none Chairman Macomber adjourned the meeting at 12:39 P.M.

Doug Moore, Executive Secretary