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TRANSCRIPT OF PROCEEDINGS
BEFORE THE
TEXAS RACING COMMISSION
AUSTIN, TEXAS

COMMISSIONERS MEETING
Wednesday, August 31, 2005

BE IT REMEMBERED THAT ON THE 31st day of August
2005, the above-described matter came on for hearing at
the offices of the Animal Health Commission, 2105 Kramer
Lane, Austin, Texas 78758, before THE HONORABLE R. DYKE
ROGERS, CHAIRMAN, and the following proceedings were
reported by Randall N. Finch, CSR in and for the State
of Texas as follows:

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APPEARANCES:

COMMISSIONERS

R. Dyke Rogers, Chair

Jesse R. Adams

Treva Boyd

G. Kent Carter, D.V.M.

Louis E. Sturns

Michael G. Rutherford, Vice Chair

Charles L. Sowell

EX-OFFICIO MEMBERS

Ernest Angelo, Jr., Public Safety Commission

Jimmy Archer, Office of the Comptroller of Accounts

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P R O C E E D I N G S

WEDNESDAY, AUGUST 31, 2005

10:30 a.m.

I. CALL TO ORDER

CHAIRMAN DYKE ROGERS: Okay. We call this meeting to order. Ms. Giberson, will you call the roll, please.

ROLL CALL

GLORIA GIBERSON: Jesse Adams.

JESSE ADAMS: Here.

GLORIA GIBERSON: Treva Boyd.

TREVA BOYD: Here.

GLORIA GIBERSON: Dr. Kent Carter.

DR. KENT CARTER: Here.

GLORIA GIBERSON: Ernest Angelo.

ERNEST ANGELO: Here.

GLORIA GIBERSON: Mike Rutherford.

MICHAEL RUTHERFORD: Here.

GLORIA GIBERSON: Charles Sowell. Jimmy Archer.

JIMMY ARCHER: Here.

GLORIA GIBERSON: Louis Sturns.

LOUIS STURNS: Here.

GLORIA GIBERSON: Dyke Rogers.

CHAIRMAN DYKE ROGERS: Here. There's a

1 quorum present, so we will begin. Before we begin, I
2 think -- Ms. King?

3 CHARLA ANN KING: Yes, sir.

4 CHAIRMAN DYKE ROGERS: I think I'd like to
5 just maybe introduce you to the folks who are out here.
6 They may all know who you are and Ms. Goins, but Ms.
7 King is the new executive secretary. Liz Goins is our
8 new general counsel. So we're kind of starting all with
9 some fresh faces. I want to welcome you to the
10 commission and thank you for being here.

11 CHARLA ANN KING: Thank you.

12 CHAIRMAN DYKE ROGERS: As if you had a
13 choice.

14 CHARLA ANN KING: We're happy to be here.

15 CHAIRMAN DYKE ROGERS: Thank you.

16 II. PROCEEDINGS ON RULEMAKING

17 CONSIDERATION OF AND ACTION ON THE FOLLOWING
18 RULES:

19 A. ADOPTIONS (Tab 1)

20 CHAIRMAN DYKE ROGERS: Okay. We'll begin
21 with adoptions under Tab 1. 309.164, 309.120, 311.211,
22 309.8, 313.501, and those are all amendments.
23 Ms. Goins, if you would give us an overview of those,
24 please.

25 LIZ GOINS: Thank you. Commissioners,

1 these are rules that you proposed at the June 22nd, 2005
2 meeting. The Chapter 321 review was published in the
3 July 8th issue of the Texas Register. And all of the
4 other proposals are published in the July 29th issue.
5 No comments were received regarding any of these
6 proposals.

7 Specifically, Section 309.164, accounting
8 practices, the amendment to this section eliminates
9 unnecessary detail with respect to the accounting
10 systems at racetracks and removes the requirement that
11 associations' internal accounting systems be approved by
12 the executive secretary. In practice, I think the rule
13 is a little bit too detailed comparing with what the
14 actual accounting systems were for the racetracks, and
15 that was the purpose of the amendment.

16 Sammy Jackson, deputy director of finance
17 and regulatory control, is available to answer any
18 questions.

19 Section 309.120, parking for licensees,
20 and Section 311.211, weapons prohibited, are two related
21 amendments. The way the rules were originally drafted
22 with respect to the presence of weapons on association
23 grounds was inconsistent with what the penal code
24 required. The penal code only prohibits -- it does not
25 prohibit weapons on the parking lots. And the way the

1 rules were written, it did prohibit on parking lots
2 through the use of the terms enclosure and/or
3 association grounds. So this amendment provides
4 clarification to come into compliance with the penal
5 code.

6 Tom Neely, director of enforcement, is
7 available if you have any questions on that amendment.

8 Section 309.8, racetrack license fees, and
9 Section 313.501, training facility license, are also two
10 related amendments. As you're all aware, the commission
11 is completely funded through revenue that the commission
12 raises itself from fees, fines or perhaps greyhound
13 breakage and outs. Because the commission's revenues
14 from outs and breakage have been declining in the past
15 few years, these amendments provide for an increase in
16 some fees, an increase for a Class 2 inactive racetrack
17 license fee and an increase in annual license fees for
18 training facilities. And all these increases are
19 proposed to be effective October 1st.

20 Sammy Jackson is available if you have
21 further questions on this issue.

22 And finally, Chapter 321, pari-mutuel
23 wagering, that's a chapter review. The government code
24 requires that all agencies review their rules every four
25 years, and the commission has opted to do it on a

1 chapter-by-chapter basis, and that was done on this
2 chapter. Normal procedure is for the staff to review
3 the rules of the chapter for drafting inconsistencies
4 and any other new issues that may have arisen since the
5 last review.

6 In your packet are the only sections that
7 were actually changed. Any other sections of Chapter
8 321 where no changes were made were not included, just
9 for simplicity sake. Thank you. The word escapes me.

10 The biggest change, though, is the
11 addition of Subchapter (e) relating to ticketless
12 electronic wagering. Lila Smith, pari-mutuel audit
13 administrator, and Carol Olewin, compliance audit
14 administrator are available to answer any specific
15 questions on that issue.

16 As I stated before, there were no comments
17 received from the publication. So staff recommends that
18 the commission votes to adopt the amendments in chapter
19 review.

20 CHAIRMAN DYKE ROGERS: Thank you,
21 Ms. Goins. Are there any questions from anybody on the
22 commission? Okay. Now, I listed a while ago all of the
23 sections excepting for Chapter 21 review. I would
24 entertain a motion to adopt these amendments and the
25 chapter review.

1 TREVA BOYD: I so move.

2 LOUIS STURNS: I'll second.

3 CHAIRMAN DYKE ROGERS: Okay. Motion made
4 by Commissioner Boyd, seconded by Commissioner Sturns.
5 All in favor? All opposed? Motion carries.

6 LOUIS STURNS: Chairman, could I point out
7 that on Section 309.8(a), first sentence, purpose of
8 fees "As association," I believe it should be "An
9 association." I want to make that change.

10 LIZ GOINS: Thank you.

11 LOUIS STURNS: Okay.

12 B. PROPOSALS (Tab 2)

13 CHAIRMAN DYKE ROGERS: Okay. Proposals
14 under Tab 2. 319.363, testing for carbon dioxide, total
15 carbon dioxide. I guess we will recognize
16 Ms. Goins for -- to open discussion on this.

17 LIZ GOINS: Thank you. Commissioners,
18 before you is a new rule. It's Section 319.363, Testing
19 Control of Carbon Dioxide. Chairman, if you prefer Dr.
20 Marsh can start with a discussion on the background of
21 the impetus for this rule and then I can follow up with
22 the actual elements of the rule.

23 CHAIRMAN DYKE ROGERS: That would be
24 great. Dr. Marsh?

25 DR. STEWART MARSH: Good morning. I'm

1 Stewart Marsh, chief veterinarian for the racing
2 commission. As you know the past meeting we discussed
3 the prerace testing that we were doing at Lone Star
4 Park. We did have -- we did 159 samples. We came up
5 with 10 samples that would have been high in their
6 carbon dioxide level. Therefore, they would have been
7 positive samples.

8 Since then we've done a very limited
9 amount of testing. We did two weeks at Lone Star Park.
10 We collected 32 samples. We would have had six positive
11 tests. This involved three trainers. They -- all three
12 had two positive tests.

13 At Retama Park we did two weeks of
14 testing. That would be four races. We did 35 samples.
15 We had one that would have been a positive sample.
16 This was a different trainer than the ones that were
17 discovered at Lone Star Park. So our -- our testing
18 procedures are showing that we do have people that are
19 testing high in their carbon dioxide level.

20 Any questions or follow-up?

21 CHAIRMAN DYKE ROGERS: Do you just blindly
22 -- and I don't mean do you do it blindly, but is this in
23 the blind or do you -- do you know if there's any
24 discussions with any of those trainers or is this just
25 solely right now an internal issue?

1 DR. STEWART MARSH: I did discuss the
2 issue or the findings of the high level with the trainer
3 at Retama Park.

4 CHAIRMAN DYKE ROGERS: Just out of
5 curiosity, what kind of response did you get?

6 DR. STEWART MARSH: He said he did not
7 milkshake the horse, that he did feed carbon dioxide, or
8 bicarbonate -- sodium bicarbonate in the feed and he
9 feeds earlier. He feeds five hours prior to when his
10 horse races, which is probably a little different than
11 most trainers do. That was his response.

12 CHAIRMAN DYKE ROGERS: Okay. Was there
13 any discussion of anybody at Lone Star?

14 DR. STEWART MARSH: No.

15 CHAIRMAN DYKE ROGERS: Okay. Are there
16 any questions of Dr. Marsh? Yes, sir.

17 JESSE ADAMS: Dr. Marsh, in your opinion,
18 could this be the case in each -- in each of those
19 positives? Could it be a feed only issue? And if it
20 is, is that as much concern to us as the...

21 DR. STEWART MARSH: From the research that
22 I've done and numerous papers that I've found, the
23 amount of bicarbonate that a horse would voluntarily eat
24 should not raise the CO2 level to what we are testing
25 for with -- for what we would call a positive.

1 I guess, theoretically, yes, maybe -- maybe that could
2 do it. I know of no research that has shown that
3 feeding bicarb five hours before or prior to a race
4 would raise the level -- the CO2 level to where it would
5 look in...

6 CHAIRMAN DYKE ROGERS: The horses that
7 were tested, was there any follow-up to see kind of how
8 they did? Did they light up the board or they won --
9 they won, lost, did well, did poorly?

10 DR. STEWART MARSH: The ones at Lone Star
11 that were positive did not get on the board. They did
12 not finish in the first four races. The one at Retama
13 won, won the race.

14 CHAIRMAN DYKE ROGERS: Okay. Mr. Carter?

15 DR. KENT CARTER: When you were discussing
16 this with the trainer and he told you he fed bicarb in
17 the feed, how much did he say he fed?

18 DR. STEWART MARSH: A tablespoon.

19 DR. KENT CARTER: A tablespoon?

20 DR. STEWART MARSH: About that much.

21 DR. KENT CARTER: When you guys tested the
22 milkshaking and the CO2 levels you got, have you tried
23 feeding horses bicarb and see what it does?

24 DR. STEWART MARSH: We have not done that,
25 no.

1 DR. KENT CARTER: Seems unusual that a
2 tablespoon would raise it that high, doesn't it?

3 DR. STEWART MARSH: It seems unusual to
4 me. Not very likely, I don't think.

5 DR. KENT CARTER: I have one other
6 question. The 38 millimoles is what you're proposing
7 here?

8 DR. STEWART MARSH: Yes.

9 DR. KENT CARTER: Is that what's currently
10 being done in other states?

11 DR. STEWART MARSH: 37 is usually the
12 level that they're doing in their association testing,
13 not their regulatory testing, in the association
14 testing. And in my research of what I've been looking
15 for, it's common knowledge that Furosemide will elevate
16 the TCO₂ to a certain degree. And that's why I raised
17 it a notch.

18 Now, some other jurisdictions that have
19 their rules in place or are proposing the rules are
20 going with two values, one for 37 millimoles for a
21 non-Furosemide horse and 39 millimoles for a Furosemide
22 horse. Since almost all our thoroughbreds in Texas race
23 on Furosemide, I would have no problem with raising that
24 to 39. That would be fine with me.

25 CHAIRMAN DYKE ROGERS: Mr. Rutherford.

1 MICHAEL RUTHERFORD: I've talked to a
2 number of trainers about this, you know, all over the
3 country and -- because it's a U.S. problem, it's not
4 just Texas. And I said, "Well, why are you giving them
5 milkshakes?" And the main reason that people are doing
6 this is to hide other drugs, mask other drugs. To me,
7 it's hurting our ability to test for other drugs. I
8 don't know if a milkshake really helps that much. The
9 only reason I can figure out they're doing that is to
10 mask other drugs. I don't know if that's possible or
11 not. But that's what the trainers tell me.

12 DR. STEWART MARSH: I think the
13 bicarbonate causes further diuresis along with the
14 Furosemide causing diuresis, so the urine would be more
15 dilute still, which could make detection of drugs
16 harder.

17 MICHAEL RUTHERFORD: So we can't
18 really -- our drug tests are not as effective if they're
19 doing these milkshakes, in my opinion, what I've found
20 talking to different trainers. I was up in Dallas
21 yesterday and I talked with three or four trainers. One
22 of them says, "Well, I don't think milkshakes help a
23 horse. Those people are doing it to mask other things
24 they're giving horses."

25 DR. STEWART MARSH: Well, this is a common

1 thought.

2 CHAIRMAN DYKE ROGERS: Mr. Adams.

3 JESSE ADAMS: My question was -- and it
4 may be -- may not be quantitative, but the positive
5 tests that you got, would they have also been positive
6 had the level been --

7 DR. STEWART MARSH: Yes.

8 MICHAEL RUTHERFORD: I would say another
9 thing about the horses that you said at Lone Star that
10 didn't run good. They probably had something bothering
11 them and hurting them, and that's the reason they did
12 the milkshakes because they wanted to give them other
13 drugs to make them run good. And it obviously didn't
14 help them.

15 CHAIRMAN DYKE ROGERS: Mr. Carter.

16 DR. KENT CARTER: I know that some other
17 states are doing this testing and they have different
18 ways -- you know, some of them are doing isolation and
19 some of them doing random testing, things like that.
20 Have they had any problems? I mean, once they said
21 we're going to start testing and everybody knows they're
22 going to start testing and they're doing it at the
23 levels of 39 or 37, they don't feel that they're getting
24 very many false positives, do they? I think my
25 understanding from speaking to one person is that as

1 soon as they started doing it, the horses didn't have
2 those levels anymore. Is that what you found?

3 DR. STEWART MARSH: Yes. And I think that
4 would be the case in Texas.

5 MICHAEL RUTHERFORD: Have you heard
6 anything about California, how effective the testing is
7 doing out there? Has it slowed down?

8 DR. STEWART MARSH: It's slowed down
9 tremendously since the associations have started and
10 it's -- you know, it's public knowledge, well publicized
11 that these trainers are going to the detention barns.
12 Now, I don't think their actual regulatory rule is in
13 effect yet, but it has slowed down with the association
14 detention barn situation.

15 CHAIRMAN DYKE ROGERS: Ms. Boyd.

16 TREVA BOYD: Dr. Marsh, given the
17 questions that have been asked about whether or not
18 milkshaking covers up other drugs, my question has to do
19 with the fines on the offenses that we have noted as
20 something that we're going to try to do. Can you put
21 into perspective for me how widespread a problem it's
22 going to be? Is it serious? Is it -- because my
23 question has to do with these offenses and the fines
24 associated with them. If indeed it is that big a
25 problem, if it is going to be something that we're going

1 to worry about with other drugs, then should not the
2 offenses have a heftier fine associated with them?

3 DR. STEWART MARSH: Okay. The benefits of
4 giving bicarbonate is off the board. There's very
5 diverse opinions on how much benefit there is to the
6 horse as far as actually enhancing the performance. So
7 some studies show that, yes, it does; some studies show,
8 no, it doesn't. Some studies show it will some and it
9 won't some. So we don't really know what the exact
10 benefit is versus a drug, say, a nonsteroidal
11 anti-inflammatory drug that, due to its nature of
12 reducing inflammation, also reduces pain. We know what
13 that drug does. And I would say probably a reduction in
14 pain even to some degree would influence the outcome of
15 a race probably as much as loading with bicarbonate.

16 And these penalties before you are very
17 similar to a penalty for a Class 4 drug, which is a
18 nonsteroidal anti-inflammatory type penalty. So I think
19 the penalties are in line with the infraction we're
20 dealing with.

21 CHAIRMAN DYKE ROGERS: Other than
22 Virginia, the proposed penalties would be the strongest
23 in the industry that's anywhere proposed. Isn't that
24 how you would read this? There isn't anybody else other
25 than Virginia that would have a tougher set of penalties

1 than the penalties that are being proposed.

2 DR. STEWART MARSH: I really haven't
3 researched the penalty, Mr. Chairman.

4 CHAIRMAN DYKE ROGERS: Okay.

5 MICHAEL RUTHERFORD: I think the biggest
6 penalty you can give is to suspend the trainer.

7 DR. STEWART MARSH: I agree with that.

8 MICHAEL RUTHERFORD: All that revenue.
9 They would rather pay \$10,000 and get away with it than
10 they would be off 30 days.

11 TREVA BOYD: But if it's that big a
12 problem, I mean, look at the manpower we've spent on it,
13 the time we've spent discussing it.

14 MICHAEL RUTHERFORD: I agree with you.

15 TREVA BOYD: The issues surrounding it.

16 MICHAEL RUTHERFORD: I agree with you.

17 TREVA BOYD: I just was concerned that why
18 are you giving them three strikes? I mean, why aren't
19 you being tougher on the first two? That was my
20 question.

21 MICHAEL RUTHERFORD: I agree.

22 TREVA BOYD: I didn't understand why all
23 this surrounding it if it's not that big a deal? Are we
24 just making a big deal out of it or is it just certainly
25 something that we need to put in severe penalties for?

1 DR. STEWART MARSH: Here is Mr. Ferrara.

2 JOHN FERRARA: John Ferrara, director of
3 racing. I believe you-all have a sheet that -- there's
4 only a few jurisdictions that have rules concerning
5 milkshaking, and I gave you have an outline of what
6 their policy and penalties are.

7 CHAIRMAN DYKE ROGERS: Okay.

8 JOHN FERRARA: And what we're recommending
9 is not the toughest or is not the most lenient. Our two
10 neighboring states are the most lenient as far as the
11 penalties. And so it just gives you an idea of what
12 other jurisdictions think, the penalty for milkshaking.

13 TREVA BOYD: I guess I heard something
14 today here that I didn't really realize about it
15 potentially covering up other drugs. If that's the
16 case, then I would think that us leading the industry
17 would be something we would want to do.

18 MICHAEL RUTHERFORD: I really think from
19 the people that I've talked to, that it compromises our
20 ability to test for other drugs. I think that's why
21 they're doing it.

22 TREVA BOYD: Could we get more information
23 on that, Dr. Marsh, so that we can put this into
24 perspective a little bit better?

25 DR. STEWART MARSH: Yes, I can look into

1 that and get more data on that --

2 TREVA BOYD: Yes.

3 DR. STEWART MARSH: -- idea of the drug
4 masking.

5 TREVA BOYD: Because if somebody works for
6 me -- and I had this situation this week, if somebody
7 works for me that's in a high liability area, you think
8 I want to give them three chances to, you know, be
9 detrimental to my business? I'm not. I'll give them
10 two. But after that it's your decision, not mine.

11 DR. STEWART MARSH: I understand.

12 CHAIRMAN DYKE ROGERS: Mr. Carter.

13 DR. KENT CARTER: With all due respect,
14 I'm not sure we know that it masks other drugs --

15 MICHAEL RUTHERFORD: I didn't say I knew
16 it did.

17 DR. KENT CARTER: Yeah. I'm not sure we
18 know that and I'm not sure we know what drugs it would
19 mask. Bicarb will change the pH of the blood and the pH
20 of the urine, and that might affect some testing but it
21 might not affect other testing. And I don't know
22 if -- there's people from TVMDL diagnostic lab here that
23 might be able to comment on that.

24 But I wouldn't -- I wouldn't want us to
25 jump into assuming that this drug, this bicarbonate,

1 which is a common household product, is all of a sudden
2 masking opiates or something like that and levy a fine
3 accordingly. Because of what people -- you know,
4 trainers do all kinds of things because they think it's
5 doing things, and there are probably a lot of trainers
6 out there that will give bicarb because they think it
7 might help. They don't know whether it helps or not.
8 And they might also do it because they think that it
9 masks drugs, and it might not mask drugs at all.

10 And so I would say we ought to stick to
11 the fact of bicarb might affect racing performance or
12 might not, but, regardless, if we make it illegal, I
13 don't think that it ought to be concurrent with the fact
14 that maybe somebody can go out there and give an opiate
15 to a horse or something and mask it by bicarb, because
16 we don't know that. And I don't know if the guys from
17 TVMDL that test this have got any comments about it, but
18 I would probably think that's probably overrated a
19 little bit.

20 MICHAEL RUTHERFORD: Dr. Carter, do you
21 think that the -- do the horsemen and their trainers do
22 this themselves or do they have a vet do it? How hard
23 is it to do?

24 DR. KENT CARTER: There was a period of
25 time early on in this business where the veterinarians

1 were doing it through a stomach tube. They were
2 stomach-tubing the horses and they were mixing a
3 concoction of bicarbonate and confectioner's sugar,
4 powdered sugar, and pumping it down into the horses.
5 There are oral products now, a paste just like a paste
6 wormer that they can take and stick in their mouth and
7 give it themselves.

8 So I would think that very few
9 veterinarians are doing it. I think it's probably the
10 trainer, the trainer's helper. There's lot of
11 nutritional supplements that have bicarb in it thrown in
12 the feed. But these milkshaking products are now in
13 paste form, so I doubt that they're calling a
14 veterinarian in to do it.

15 DR. STEWART MARSH: Our investigators
16 observed the trainers both at Lone Star and Retama Park
17 that were incriminated in this, and they found no
18 detection of a veterinarian using a stomach tube to
19 administer any bicarb.

20 CHAIRMAN DYKE ROGERS: Ms. Goins, where
21 are we on the rule or the proposal at the moment?

22 LIZ GOINS: Well, currently -- I can go
23 through the elements and discuss the status.

24 CHAIRMAN DYKE ROGERS: Okay. Please.

25 LIZ GOINS: Thank you. Currently the

1 rules prohibit an excess level of total carbon dioxide
2 and -- in a race horse, you know, and that level is
3 established as 38 millimoles per liter. The rule
4 authorizes the executive secretary to implement a
5 program to collect and test specimens from race horses.
6 That testing program may be random or it may -- and it
7 may be conducted prerace or postrace. The rule
8 prohibits split specimen testing.

9 And the penalties for such a violation you
10 touched on a little bit, but I'll just go through the
11 details. Penalty for trainers, for the first offense
12 it's a \$2,500 fine, 15-day suspension, disqualification
13 of the race horse and redistribution of the purse.

14 For a second offense it carries a \$3,500
15 fine, a 90-day suspension, disqualification and
16 redistribution of the purse. And for the third offense,
17 it's a \$5,000 fine, one-year suspension,
18 disqualification of the racehorse and redistribution of
19 the purse.

20 Quite frankly, we are still in the due
21 diligence phase. From your discussions today, there are
22 still a lot of pending issues out there. We've had
23 limited opportunities for discussion with industry
24 representatives regarding this rule. And in the week or
25 so that the rule has been proposed, we have been

1 receiving a lot of comments on issues that we would like
2 to further investigate and get more information and work
3 more with the industry representatives in a working
4 group setting to try to address these and resolve these
5 issues before the commission takes any action.

6 Some of these issues that remain are
7 brought up by the commissioner, the masking effect, that
8 there is an effect to be considered in this rule;
9 re-evaluating the need for split samples; and if we do
10 that, how do we do that; and making sure that our
11 testing is in compliance with our current testing
12 procedures.

13 In addition, there's been new developments
14 in other jurisdictions such as California that addresses
15 some of these issues that we would like to further
16 analyze, investigate and get some better answers and a
17 better product for y'all to vote on.

18 Staff recommendation is that no action be taken on this
19 rule today with the expectation that the staff will
20 continue into progress on this rule with the industry
21 representatives and that we have a rule at the next
22 commission agenda for the commissioners to take action
23 on.

24 CHAIRMAN DYKE ROGERS: Thank you.

25 Commissioner Adams.

1 JESSE ADAMS: Yes. I'd just like to state
2 for the record that I understand the need to be thorough
3 and do this right, but I also would be very reluctant to
4 regress now, because this is something
5 we -- as Treva said, we've spent a lot of time already.
6 We know where we are now as far as the samples that have
7 been taken so far. We need to move on this.

8 CHAIRMAN DYKE ROGERS: Well, I'm assuming
9 that your proposal or your suggestion, staff
10 recommendation is to table this presently, but your
11 proposal would be that at our next meeting we would come
12 back with something that would be definitive to be able
13 to publish.

14 LIZ GOINS: Absolutely.

15 CHAIRMAN DYKE ROGERS: Okay. We might
16 want to take some comments from the commissioners. My
17 comment would be that if Dr. Marsh has said 39 is a
18 number that he's comfortable with, we probably should
19 just move to that and not differentiate. At least we
20 ought to consider that. And that you've heard some
21 other discussion about penalties, both pro and con, and
22 we might want to take that into account.

23 Let me ask you this about your working
24 committee with the industry. Ms. King, would you like
25 to have a couple of commissioners on that working

1 committee that you put together?

2 CHARLA ANN KING: Yes, sir. That would be
3 very helpful. In particular, Dr. Carter might could
4 assist us in that, and anybody else that would be
5 interested. We have to limit it, of course, so that we
6 only have two or three. But it would be helpful, I
7 think, to get the commissioners involved and so that
8 they can hear directly and participate in the
9 discussions with the industry and their staff's concerns
10 also.

11 CHAIRMAN DYKE ROGERS: Okay. I would like
12 to ask Dr. Carter and Commissioner Rutherford to serve
13 on that working committee. Is that okay?

14 DR. KENT CARTER: I'll be happy to, yeah.

15 CHAIRMAN DYKE ROGERS: Okay. And then we
16 need a proposal at our next meeting to be able to submit
17 to the Register. Okay. Is there any objection to
18 tabling this presently?

19 MICHAEL RUTHERFORD: One question: On the
20 committee, who in the industry are you going to get,
21 somebody from the thoroughbred, the quarter horse or
22 horsemens partnership?

23 CHARLA ANN KING: Yes, sir, all three.

24 MICHAEL RUTHERFORD: Good. You will have
25 a representative from one of the tracks or more?

1 CHARLA ANN KING: Definitely.

2 MICHAEL RUTHERFORD: Okay.

3 CHAIRMAN DYKE ROGERS: Okay. Since they
4 would be paying for it, they probably should be involved
5 in the discussion.

6 MICHAEL RUTHERFORD: We got that part.

7 CHAIRMAN DYKE ROGERS: Don't want to leave
8 that part out. Okay. Sounds good.

9 III. GENERAL BUSINESS

10 We would move to general business,
11 consideration of and possible action on the following
12 matters: Budget and finance update. Mr. Jackson, would
13 you present our budget update, please.

14 A. BUDGET AND FINANCE UPDATE (Tab 3)

15 SAMMY JACKSON: Good morning,
16 Commissioners. I have three things to discuss with you
17 today. First, staff is very happy to introduce our new
18 CFO. Shelley Harris-Curtsinger, if you don't mind
19 stepping up. She's taking over. Our previous CFO has
20 decided to retire and move on to greener pastures. So
21 we're glad that she is aboard; she brings a wealth of
22 knowledge with her.

23 The second thing I want to discuss with
24 you this morning, there should be a handout that was
25 given to you by Ms. Giberson which is a draft of the

1 fiscal year ending 2006 budget, and I just wanted to
2 bring this to your attention. And the new fiscal year
3 actually starts tomorrow, and this is a very raw budget
4 from which we'll be operating from. This is the
5 additional appropriations from the Legislature adding in
6 the LAR that you approved back in 2004. We had some of
7 the added requirements that were mandated during the
8 last legislative session as far as longevity and the
9 salary increase that the state employees got, which is a
10 rider method of funding.

11 So I wanted to make sure you had that,
12 that you're aware of it, because the next commission
13 meeting we'll be coming before you with a finalized
14 version for approval that we have to submit to the
15 Governor's office and the Legislative Budget Board.
16 And this was the second item.

17 The third item, which is in your agenda
18 packet, is the update on our budget standing of this
19 current fiscal year as of July 31st. We are under
20 budget nicely. And since the fiscal year is almost up,
21 we know now that we will be significantly under budget,
22 we believe by about 5 to 6 percent. So that leaves the
23 agency in a very good financial position going into the
24 new fiscal year.

25 If there's any questions I'll be more than

1 happy to answer them.

2 CHAIRMAN DYKE ROGERS: Mr. Jackson, on
3 this proposed budget, when did you submit that to the
4 Governor?

5 SAMMY JACKSON: I believe we were looking
6 at the one we did for the previous year and it is mid to
7 end of November.

8 CHAIRMAN DYKE ROGERS: Okay. So we'll
9 have an opportunity to review that in October.

10 SAMMY JACKSON: Yes, sir, very much so.

11 CHAIRMAN DYKE ROGERS: Okay. If you could
12 get that out to us a little bit early before our meeting
13 next time so we have an opportunity to review that, I
14 think that would be a good thing. That would pull more
15 robust discussion about it.

16 SAMMY JACKSON: Yes, sir. Very good.

17 CHAIRMAN DYKE ROGERS: Thank you. Good to
18 see you up and around, sir.

19 SAMMY JACKSON: Thank you very much.

20 B. APPROVAL OF CHARGES FOR SERVICES PERFORMED
21 UNDER THE MEMORANDUM OF UNDERSTANDING WITH
22 TEXAS VETERINARY MEDICAL DIAGNOSTIC LABORATORY

23 CHAIRMAN DYKE ROGERS: Okay. We need
24 approval of charges for services performed under the
25 memorandum of understanding with the Texas Veterinary

1 Medical Diagnostic Laboratory. This is covered under
2 the Texas Racing Act, article 179(e), Section 3.07(D)
3 and it's under Tab 4, Commissioners. I'd recognize
4 Dr. Marsh to present something for our approval.

5 DR. STEWART MARSH: The memorandum of
6 understanding that has been provided you is basically
7 the same document as we approved last year. There were
8 some revisions last year. They will remain in there.
9 The testing of the equine drug samples will remain the
10 same. The procedures will remain the same, and the cost
11 will remain the same at \$71 a sample.

12 A provision has been added to cover the
13 carbon dioxide testing, which will be \$9.50 a sample.
14 In the greyhound samples we have added five ELISA tests
15 from five to 10. However, the price will remain the
16 same at \$32 a sample. Mr. -- Dr. Carter.

17 DR. KENT CARTER: What's the
18 consideration for the CO2 and bicarbonate in dogs?

19 DR. STEWART MARSH: We have never
20 considered it. It could be the same problem.

21 DR. KENT CARTER: Thank you.

22 CHAIRMAN DYKE ROGERS: Okay. We need to
23 approve this. I'd entertain a motion to approve these
24 charges for the services.

25 JESSE ADAMS: So move.

1 CHAIRMAN DYKE ROGERS: Motion made by
2 Commissioner Adams. Is there a second?

3 DR. KENT CARTER: Second.

4 CHAIRMAN DYKE ROGERS: Seconded by
5 Commissioner Carter. All in favor. Motion carries.

6 IV. PROCEEDINGS ON RACETRACKS

7 CHAIRMAN DYKE ROGERS: I'll move to
8 proceedings on racetracks, consideration of and action
9 on the follow matters. We have a request by Valley Race
10 Park to modify its 2005 race dates. And if you would
11 introduce yourself, please.

12 HUW WILLIAMS: Commissioners, good
13 morning. Huw William, director of operations from
14 Valley Race Park. Our request is that the commissioners
15 approve our request to modify our dates for November and
16 December of 2005, the reason being two-fold: One, the
17 circumstances that we experienced with our '04-'05 meet;
18 and secondly, to align with our proposed racing format
19 for 2006. I think you-all have the details of that.

20 CHAIRMAN DYKE ROGERS: We have all the
21 details in the letters. Are there any questions of
22 Mr. Williams? Okay. Thank you, Mr. Williams.

23 I would entertain a motion to approve
24 their request and modify the 2005 race dates.

25 ERNEST ANGELO: Move approval.

1 CHAIRMAN DYKE ROGERS: Okay. There's been
2 a motion made by Commissioner Angelo. Is there a
3 second?

4 TREVA BOYD: Second.

5 CHAIRMAN DYKE ROGERS: Seconded by
6 Commissioner Boyd. All in favor. (Motion passed)

7 Okay. Allocation of 2006 live race dates
8 for the greyhound tracks. Mr. Ferrara. This would be
9 under Tab 6.

10 JOHN FERRARA: Tab 6, yes, sir. Good
11 morning. Before I start, I'd like to thank some people
12 that have put a lot of effort and worked with me as far
13 as assisting me in the calendar for 2006. The director
14 of all three horse groups in Texas, they broke -- all
15 three of them worked with me to present a calendar with
16 not too much controversy. And I appreciate it and I
17 thank all the general managers for their input, the
18 horse tracks, greyhound tracks, and the TGA.

19 Tab 6 is the requested greyhound race
20 dates. And the staff recommends that you approve the
21 greyhound calendar as requested.

22 CHAIRMAN DYKE ROGERS: Are there any
23 questions of the greyhound calendar? We would entertain
24 a motion to approve that as requested.

25 LOUIS STURNS: So moved.

1 CHAIRMAN DYKE ROGERS: Motion made by
2 Commissioner Sturns. Seconded by Commissioner Adams.
3 All in favor? All opposed? That was very simple, John.
4 We move now to live dates for horse racetracks under Tab
5 No. 7.

6 JOHN FERRARA: Okay. Tab No. 7, you have
7 a requested calendar and a recommended staff calendar.
8 Lone Star Park, Retama and Fredericksburg, there's been
9 no change to what they have requested. The staff has
10 recommended that you approve their dates as requested.

11 Fredericksburg, their calendar is exactly
12 like it's been for the past years. Lone Star Park,
13 their format, they have added one week of racing and
14 gone from 14 weeks to 15. But there's more four-day
15 weeks at the tail end of their meet, and the reasoning
16 being because of the heat, the shortage of horses. And
17 I recommend that you approve that format.

18 Retama has asked for one additional week
19 of racing over what they had this year for the
20 thoroughbred meet. The quarter horse meet is the same,
21 24 racing days. And I recommend that you approve their
22 request.

23 Sam Houston Race Park. The recommended
24 calendar, I've asked Sam Houston to open up 19 days
25 later than they requested. And the reasoning behind

1 that, it will eliminate the holiday gap of no racing
2 that the horsemen oppose. And it will also reduce the
3 number of three-day weeks of racing and convert those
4 weeks to four-day race weeks. And I'd like to
5 personally thank Bob Bork at Sam Houston Race Park
6 because they're the only ones that had to give and
7 concede a little bit this year.

8 Manor Downs, I've recommended that they
9 open up one week earlier, February the 25th, so as to
10 avoid the overlap with Retama Park. And Howard Phillips
11 called me yesterday and told me that he's come into
12 agreement with the recommended dates.

13 If you have any questions on the calendar,
14 please ask.

15 DR. KENT CARTER: In the sheet we've got
16 here, there was some concern about the overlap of Manor,
17 and I guess we're talking about that's been fixed now,
18 right?

19 JOHN FERRARA: Yes, sir. Manor will open
20 up one week earlier. And the overlap no longer exists.
21 And like I say, Howard Phillips and Manor Downs has
22 agreed to that.

23 CHAIRMAN DYKE ROGERS: Okay. Thank you,
24 Mr. Ferrara.

25 DR. KENT CARTER: One other question, if I

1 may?

2 CHAIRMAN DYKE ROGERS: Go ahead.

3 DR. KENT CARTER: There was a letter in
4 here from the Quarter Horse Association about concerns
5 of dates and open dates and gaps.

6 JOHN FERRARA: Uh-huh. Jeff Greco and Bob
7 Bork confirmed with -- my understanding is Jeff Greco of
8 Lone Star Park has agreed to open their back side four
9 days earlier. Bob Bork of Sam Houston has agreed to
10 keep their back side open three more days.
11 And the horsemen will have a place to go.

12 DR. KENT CARTER: So that concern has been
13 fixed?

14 JOHN FERRARA: Yes, sir. Yes.

15 DR. KENT CARTER: Okay.

16 CHAIRMAN DYKE ROGERS: Thank you. Is
17 there anybody else that would like to testify on this
18 issue? I don't know whether to say really thank you or
19 this is really pretty boring. (Laughter)

20 JOHN FERRARA: Yes, it is.

21 CHAIRMAN DYKE ROGERS: I guess I should
22 say thank you very much for making this kind of boring.
23 There are some new commissioners on this commission that
24 have not ever got to experience a real good race date
25 discussion, so they're probably very thankful for that,

1 so...

2 But, no, seriously, it is a good thing to
3 see the people in the industry participating together in
4 working toward a common cause, and this could have been
5 a year that would have been difficult to get that worked
6 out and we were real pleased that you have worked that
7 out among yourselves. That's a whale of a lot better
8 than us trying to do that from here, so thank you.

9 We would entertain a motion to --

10 MICHAEL RUTHERFORD: So moved.

11 CHAIRMAN DYKE ROGERS: Maybe we should say
12 what that motion is. A motion to approve these race
13 dates as recommended by the staff.

14 JIMMY ARCHER: So moved.

15 MICHAEL RUTHERFORD: Second.

16 CHAIRMAN DYKE ROGERS: Motion made by
17 Commissioner Archer. Seconded by Commissioner
18 Rutherford. All in favor? Motion passes.

19 We'll move to report on racetrack
20 inspections under Tab 8. The staff is available for
21 questions. Commissioners, if you have questions. Ask
22 them, please. Commissioner Boyd.

23 TREVA BOYD: There are two still
24 outstanding unsatisfactory items in Gulf. Is that
25 right?

1 TOM NEELY: Ms. Boyd, I'm Tom Neely, I'm
2 the director of enforcement. And those two situations
3 were resolved August the 22nd, so everything on our
4 report now has been resolved.

5 CHAIRMAN DYKE ROGERS: Thank you,
6 Mr. Neely.

7 MICHAEL RUTHERFORD: I want to know
8 why -- I want to question why Manor isn't on there.
9 This is boring not having Manor on there. Are they sick
10 out there or what? (Laughter)

11 TOM NEELY: Mr. Phillips is here to
12 respond to that.

13 VI. OLD/NEW BUSINESS

14 CHAIRMAN DYKE ROGERS: Okay. I think that
15 ends our regular agenda. It's only 11:15. Other than
16 setting a date for our next meeting, do we -- well, let
17 me ask this: Is there any other business to come before
18 the commission other than that? Okay. The dates being
19 proposed are October 17th, 24th and 31st.

20 CHARLA ANN KING: That's the week of.

21 CHAIRMAN DYKE ROGERS: Pardon?

22 CHARLA ANN KING: That's the week of.

23 CHAIRMAN DYKE ROGERS: That's the week of
24 those dates? I'd like to not do it on Halloween day, so
25 could we pick a different date?

1 DR. KENT CARTER: October 19th and 20th
2 I'm out of the state.

3 CHAIRMAN DYKE ROGERS: The 19th and 20th
4 you're out. Anybody else have any other objectionable
5 dates?

6 MICHAEL RUTHERFORD: 24th would be...

7 CHAIRMAN DYKE ROGERS: Commissioner
8 Rutherford is proposing the week of the 24th. Anybody
9 got any thoughts there?

10 JIMMY ARCHER: Any day but -- I'm out on
11 the 22nd.

12 CHAIRMAN DYKE ROGERS: You're gone all
13 week? Okay. The 24th is out.

14 LOUIS STURNS: How about the week of the
15 31st of November?

16 CHAIRMAN DYKE ROGERS: Okay. Well, let me
17 ask this: What about the week of October 17th?

18 ERNEST ANGELO: Good for me.

19 CHAIRMAN DYKE ROGERS: I'm open to any day
20 that week. What day would you --

21 DR. KENT CARTER: 19th and 20th I'm gone.

22 CHAIRMAN DYKE ROGERS: You're gone 19th
23 and 20th, that's right.

24 DR. KENT CARTER: But any other day that
25 week is fine.

1 CHAIRMAN DYKE ROGERS: That would be
2 Wednesday, Thursday. How about Tuesday of that week,
3 would that be satisfactory? Okay.

4 MICHAEL RUTHERFORD: The 18th.

5 CHAIRMAN DYKE ROGERS: That would be
6 October 18th. So that's what we'll do, October 18th for
7 the next meeting. Anything else to come before the
8 commission? Then we're adjourned.

9 (The meeting was adjourned at 11:20 a.m.)

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