

BEFORE THE  
TEXAS RACING COMMISSION  
AUSTIN, TEXAS

COMMISSION MEETING

OCTOBER 8, 2013

BE IT REMEMBERED that the above entitled matter came on for hearing on the 8th day of October, 2013, beginning at 10:30 A.M. at 2105 Kramer Lane, Austin, Travis County, Texas, and the following proceedings were reported by SHERRI SANTMAN FISHER, Certified Shorthand Reporter for the State of Texas.

APPEARANCES

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- Commissioners:      ROBERT SCHMIDT  
                             RONALD F. EDERER  
                             MIKE MARTIN  
                             GLORIA HICKS  
                             GARY P. ABER  
                             VICKI WEINBERG  
                             JOHN T. STEEN, III  
                             ANN O'CONNELL  
                             A. CYNTHIA LEON

1                   CHAIRMAN SCHMIDT:  It's 10:31.  We'll  
2   call the meeting to order.

3                   Ms. Welch, can you please call the roll?  
4                   MS. WELCH:  Commissioner Ron Ederer?  
5                   VICE-CHAIRMAN EDERER:  Here.  
6                   MS. WELCH:  Commissioner Cynthia Leon?  
7                   MS. LEON:  Here.  
8                   MS. WELCH:  Commissioner Ann O'Connell?  
9                   MS. O'CONNELL:  Here.  
10                  MS. WELCH:  Commissioner Gloria Hicks?  
11                  COMMISSIONER HICKS:  Here.  
12                  MS. WELCH:  Commissioner Vicki Weinberg?  
13                  COMMISSIONER WEINBERG:  Here.  
14                  MS. WELCH:  Commissioner Michael Martin?  
15                  COMMISSIONER MARTIN:  Here.  
16                  MS. WELCH:  Commissioner John Steen?  
17                  COMMISSIONER STEEN:  Here.  
18                  MS. WELCH:  Commissioner Gary Aber?  
19                  COMMISSIONER ABER:  Here.  
20                  MS. WELCH:  Chairman Robert Schmidt?  
21                  CHAIRMAN SCHMIDT:  Here.  
22                  I think we have a quorum.  We have a full  
23   house.  
24                  Public comment.  Devon, has anyone turned  
25   in a testimony card?

1 MS. BIJANSKY: Yes.

2 CHAIRMAN SCHMIDT: Snapper Carr?

3 MR. CARR: Mr. Chairman, members of the  
4 Commission, thank you. My name is Snapper Carr. I'm  
5 an attorney that represents the Dallas City Limits.

6 Obviously I've spoken to you on this  
7 topic several times; but at the last Commission  
8 meeting, several of the Commissioners and the chairman  
9 asked for an update that we expected to be coming out  
10 of an ongoing litigation regarding the Austin Jockey  
11 Club and Longhorn Downs license and my client and  
12 several other parties that had clouded, as you know,  
13 the question of who had the superior contractual  
14 ownership rights to that actual stock of the entity  
15 that held the license.

16 We are happy to report, as we expected,  
17 that the Dallas District Court issued its final order  
18 and judgment in this matter and it was an unequivocal  
19 win for my client. In the judgment that you have  
20 before you, I'd point you to the highlighted section  
21 that reads, in part, that it was ordered and decreed  
22 granting the judgment declaring that Austin Jockey  
23 Club's termination of the stock purchase agreement was  
24 wrongful and ineffective and it's further ordered and  
25 decreed that Dallas City Limits is granted judgment of

1 attorney's fees in the amount of \$650,000 against  
2 Austin Jockey Club. The last sentence there right  
3 after that will note that it was also granted all  
4 necessary writs to enforce this order.

5 Just a procedural history. This is a  
6 clear judgment in favor of the trial and the jury's  
7 decisions that were entered in this matter years ago.  
8 That then, as you know, sprung several appeals,  
9 including the Dallas Court of Appeals and a matter in  
10 Houston which literally just dealt with the possession  
11 of the stock and whether it should retain with one of  
12 the parties or if it should stay with an escrow agent.

13 Just, again, a little procedural  
14 history. Now that this matter has, one, gone to the  
15 Dallas Fifth Court of Appeals, been on appeal, my  
16 client came out the victor in that matter. There was a  
17 request by the other party to have the matter reviewed  
18 by the Texas Supreme Court. This Commission filed some  
19 amicus briefs in that matter. The Supreme Court  
20 rejected review of that case. The opinion from the  
21 Fifth Court remanded this back to the Dallas Court and  
22 said issue a judgment consistent with the jury findings  
23 in this.

24 And so what all does this mean? It means  
25 that the contract that my client currently has is valid

1 and in effect. And when in February of 2012 this  
2 Commission took action to preliminarily transfer that  
3 license to another entity, we protested at the time, as  
4 you will recall, and said that we did not believe that  
5 it was time to move forward on that. The other side  
6 thought that they had the judicial lining up in a way  
7 that it was going to clarify and be a victory for  
8 them.

9 At that time I think staff's briefing on  
10 it and the discussion that occurred at that meeting  
11 will note that that transfer was contingent to the  
12 superior -- if it was proven that Dallas City Limits  
13 retained superior contractual rights that we'd have to  
14 unwind that in some way. And I think that's the  
15 position that the Commission finds themselves in now.

16 Respectfully, my client would ask that at  
17 the soonest possibility that this matter be put on the  
18 Commission agenda so that we can unwind some of the  
19 steps that took place starting in February of 2012 that  
20 would then allow Dallas City Limits to move forward  
21 with an application of their own in coordination with  
22 the current holders and consistent with the court  
23 findings that my client has a valid contract that  
24 allows them the right to purchase that stock.

25 The Houston Court, to fast forward real

1 quick, again, deals specifically with possession, of  
2 who holds the actual stock. The Court had a hearing on  
3 that matter. We had hoped that the Dallas Court would  
4 have their judgment out because the Houston Court of  
5 Appeals was saying that was very important to them and,  
6 in fact, asked us to forward that to them as soon as it  
7 was issued. We have done so. It is our belief that  
8 that matter will be dismissed and that stock will  
9 retain -- be retained most likely with the escrow agent  
10 until all final transfers occur.

11 But what is not in question anymore is  
12 who has the superior contractual right to actually own  
13 that stock in the entity that manages and owns Longhorn  
14 Downs.

15 And with that, I appreciate your time and  
16 hope to visit with you more in the coming weeks. And  
17 again, we will be submitting an official request to  
18 maybe have this item placed on a future agenda. Thank  
19 you.

20 CHAIRMAN SCHMIDT: Thank you, Mr. Carr.  
21 Thank you very much.

22 Devon, any other requests for public  
23 comment?

24 MS. BIJANSKY: No.

25 CHAIRMAN SCHMIDT: Mr. Trout, will you

1 introduce the new members of our Commission staff?

2 MR. TROUT: Yes, sir.

3 First, we have a new executive assistant,  
4 Mary Welch. Mary has over 20 years' experience working  
5 with AT&T. She graduated -- she retired there as a  
6 project manager. Then she moved on to DPS. I stole  
7 her away from DPS after a 10-year career over there.  
8 She was the executive assistant to the director of  
9 intelligence in the anti-terrorism division. She has  
10 been just a wonderful addition so far. She has just --  
11 I think some of you have dealt with her. And I'm very,  
12 very pleased to have her on the staff. She took  
13 Carolyn Weiss' position. I think that you'll find that  
14 she's very, very professional in the way she conducts  
15 herself and is just an outstanding worker. I'm very  
16 pleased to have her.

17 Second, I have Robert Elrod. I'm not  
18 sure -- there he is. Robert is a graduate of TCU. He  
19 has a degree in communications. He has over 20 years'  
20 experience in the communications career field. He is  
21 our new public information officer. And he worked with  
22 the Workforce Commission. And then he comes to us  
23 directly from the Lottery Commission, where he was  
24 their communications person for about 10 years.

25 I have Joel Speight. He is the new

1 deputy director for racing oversight. He is a graduate  
2 of the Air Force Academy with a degree in engineering.  
3 He has two Master's degrees, one in computer  
4 management, one in national resource strategies. And  
5 he is a certified project management professional.  
6 Joel has over 20 years' experience in the Air Force in  
7 the financial management area. He was a controller in  
8 several positions. He has over 20 years' experience in  
9 working as a manager and a leader and about 10 years'  
10 experience at the executive level. He has already hit  
11 the ground running. He is a true professional. And  
12 I'm really happy to have him on the staff. We're very  
13 lucky to have gotten him.

14 Those are the three new members of our  
15 staff.

16 CHAIRMAN SCHMIDT: On behalf of the  
17 Commission, I'd like to welcome you all. We look  
18 forward to working with you all.

19 You've made some excellent choices,  
20 Chuck.

21 Do we have a representative from the  
22 Attorney General's office here?

23 MR. FENNER: Yes, sir.

24 CHAIRMAN SCHMIDT: Okay. I think rather  
25 than have her wait for two hours for a very brief

1 session, we're going to break into executive session  
2 right now very briefly. The time is now 10:40. We  
3 will enter executive session under Government Code  
4 551.071 to seek the advice of our attorneys regarding  
5 litigation in the matter of Churchill Downs versus the  
6 Texas Racing Commission, Case 1:12-00880. This should  
7 be about 10 minutes. I don't anticipate a very long  
8 session.

9 (Recess from 10:40 a.m. to 10:49 a.m. for  
10 executive session)

11 CHAIRMAN SCHMIDT: We are reconvening.  
12 We are reconvening out of executive session. The time  
13 now is 10:50. We have discussed the litigation in the  
14 matter of Churchill Downs versus the Texas Racing  
15 Commission and will take no additional action at this  
16 time.

17 We've increased the volume on our  
18 microphones. Can people hear a little better now?  
19 Great. If there's a problem, please let Mary know.  
20 We'll adjust that as we need to.

21 Item IV, general business, discussion and  
22 consideration of the following matters: Reports by the  
23 executive director and staff regarding administrative  
24 matters, budget and finance update.

25 Lane, can you present your update,

1 please?

2 MS. GOETSCH: Good morning,  
3 Commissioners. My name is Lane Goetsch. I'm director  
4 of finance and administration for the Texas Racing  
5 Commission. And I'm here to give the budget and  
6 finance update.

7 On pages five and six of your agenda  
8 packet, you will find the agency's fiscal year 2013  
9 operating budget reflecting revenue collections and  
10 expenditures as of August 31st, 2013. This is not the  
11 final report for the fiscal year 2013 as staff is in  
12 process of finalizing the encumbrances for this year.  
13 I anticipate presenting final budget figures at the  
14 December Commission meeting.

15 As of this date, the agency had collected  
16 8.9 million, or 92 percent, of revenues and expended  
17 7.9 million, or 85 percent, of budgeted expenditures.  
18 At this time the Racing Commission is in good operating  
19 conditions.

20 If you have any questions, I will be  
21 happy to answer them.

22 CHAIRMAN SCHMIDT: Any questions of  
23 Ms. Goetsch?

24 Thank you.

25 MS. GOETSCH: Thank you.

1                   CHAIRMAN SCHMIDT: Wagering statistics.  
2                   Sammy Jackson?

3                   MR. JACKSON: Good morning, Mr. Chairman  
4                   and Commissioners.

5                   On pages seven through nine of your  
6                   agenda packet, you will find the report on wagering  
7                   statistics for the period of January 1st through  
8                   September 29th for both 2012 and 2013. The report  
9                   reflects that 2013 wagering activity has decreased at  
10                  the horse racetracks by 2.1 percent and has increased  
11                  at the greyhound tracks by 2.35 percent.

12                  If you have any questions, I'll be happy  
13                  to answer them.

14                  CHAIRMAN SCHMIDT: Any other questions of  
15                  Mr. Jackson?

16                  Okay. Racetrack inspections.  
17                  Mr. Blodgett?

18                  MR. BLODGETT: Good morning,  
19                  Commissioners.

20                  Commissioners, for the period of time of  
21                  August 1st through October the 1st, 2013, a total of 12  
22                  racetrack inspections were reported by staff. As  
23                  outlined within your packets, these inspections were  
24                  conducted within the areas of veterinarian, safety and  
25                  security, administration, wagering, and racing at Sam

1 Houston Race Park, Retama Park, Lone Star Park, Gulf  
2 Greyhound Park, and Valley Greyhound Park. A breakdown  
3 of the inspections included nine scheduled, one  
4 no-notice, and two follow-up inspections.

5 As of the filing of this report, staff is  
6 pleased to report there's no unresolved inspection  
7 issues.

8 And I'll be happy to answer any questions  
9 that you may have.

10 CHAIRMAN SCHMIDT: Any questions?

11 Thank you, Jim.

12 Deputy Director Speight, enforcement  
13 report?

14 MR. SPEIGHT: Good morning,  
15 Commissioners.

16 Included in your information on page 11  
17 is the current enforcement report for the period  
18 between January 1 and August 31st, 2013. The total  
19 numbers of each category are consistent with 2012  
20 totals covering the same period.

21 If you have any questions, I'll be happy  
22 to answer them at this time.

23 CHAIRMAN SCHMIDT: Any questions?

24 Thank you, sir. Thank you very much.

25 And then Dr. Quirk, report on veterinary

1 policies and procedures, management of racing  
2 emergencies.

3 MR. QUIRK: Commissioners, good morning.  
4 Given that I'm left with only extemporaneous memory  
5 now, I'll have to read to you. I hate to do that, but  
6 that's kind of where I am.

7 When we last met as this group,  
8 Mr. Charles Wright addressed the group in open session,  
9 offering a fairly impassioned presentation on how best  
10 to address racing injuries, specifically those that are  
11 catastrophic or near catastrophic. I use the word  
12 "impassioned" somewhat hyperbolically here, but not so  
13 much maybe, because it is that type of issue. It's an  
14 issue that is both maybe evocative and provocative in  
15 the public eye, so it's something that we definitely  
16 want to get as right as we can possibly get it.

17 Frankly, it's the most difficult task we  
18 face as regulatory vets is to know when that has to  
19 occur or should occur. And obviously it's nuanced by  
20 perspective to some degree. But at the forefront of  
21 our concerns in this subject, it is at the forefront of  
22 our concerns when serving on track. The decision to  
23 euthanize is never taken lightly, nor is it ever  
24 undertaken as an expedient, which was maybe suggested  
25 at least.

1           However, I do commend Mr. Wright for  
2 bringing his concerns to this group and I pledge to  
3 work with him and other industry representatives to try  
4 to get this as right as we can get it.

5           Jean Cook recently canvassed a number of  
6 other jurisdictions around the country to see what  
7 policies they might -- or protocols they may have in  
8 place to address this concern. And I think really most  
9 of our neighboring jurisdictions don't have a written  
10 protocol for it. There are some that do.

11           We did get responses from three, most  
12 notably Kentucky. Kentucky has a policy that requires  
13 that two veterinarians signed off on the need for  
14 euthanasia prior to having it done. And in fact, if  
15 you remember the Eight Belles situation, after that  
16 catastrophic injury, they really briefly enacted a  
17 policy where no horse would be euthanized on track,  
18 that every horse would be anesthetized on a sled  
19 essentially and removed to an off-track site, where the  
20 determination would be made at that time as to what  
21 might be the best course for them.

22           They have since dropped that, though; and  
23 if two of their veterinarians -- and it's typical for  
24 them to have two on-track regulatory vets. If they  
25 both sign off on it, then they will proceed with it.

1           I think other jurisdictions, two other  
2 jurisdictions, in fact, have protocols in place that  
3 call for the trainer to sign off on the euthanasia  
4 prior to having that procedure done.

5           That -- I think there's some interesting  
6 aspects to this discussion. I don't want to get too  
7 far afield here. But with the advent of --  
8 particularly on the Quarter Horse side, of assisted  
9 reproductive technologies that allow for some -- for  
10 things such as the harvesting of ovums from an ovary on  
11 a valuable horse, conceivably cloning down the road  
12 could be an issue for us. Even, I suppose, in some  
13 rare instance -- I don't think this will be useful, but  
14 it was mentioned that semen could be collected from the  
15 stallion as well. But obviously those horses have to  
16 be alive, so they'd have to be anesthetized and you'd  
17 have to remove them to a remote site to accomplish  
18 these things.

19           We haven't been faced with that issue  
20 here, although it -- the one about the harvesting  
21 ovaries did come up in one instance. I'm not sure  
22 really where that will lead and we're -- you know, this  
23 really, in a sense, is attaching a dollar value  
24 actually to a horse here; and in this discussion really  
25 we don't look at it as that type of issue. It's purely

1 for humane reasons that we would act in this manner.

2 I think Mr. Wright has prepared a draft,  
3 though, drawing ideas and language from NTRA and others  
4 to produce a protocol for regulatory vets to follow in  
5 dealing with horses injured on-track. As you probably  
6 know, in our rules, the only language we have  
7 addressing this issue is that as a condition of  
8 licensure that you submit to the discretion of the  
9 on-track veterinarian in this matter. I think that's  
10 certainly something we should review and maybe  
11 rethink.

12 I've also -- I'm in receipt of additional  
13 proposed protocols which really are clearly spelled out  
14 and written and I think we adhere to pretty closely in  
15 our policy and how we proceed with this issue. We  
16 simply don't have them down in print. And one of the  
17 reasons we don't is that the fear was that it would  
18 be -- maybe we couldn't cover everything with a rule,  
19 that it would be somewhat restrictive.

20 But it's -- it is an issue that we're  
21 very sensitive to, we certainly share his concern  
22 about, and we will meet additional -- with additional  
23 representatives of the industry to see if we can come  
24 up with a policy or a protocol that people feel  
25 comfortable with and we think will serve our needs.

1 I'm happy to answer any questions you may  
2 have on the subject.

3 CHAIRMAN SCHMIDT: Dr. Quirk, do we have  
4 a final diagnosis on the horse that was euthanized?

5 MR. QUIRK: That's a very good question.  
6 And here's -- I have a note here that one of the things  
7 that I think we need to look perhaps to adopt and  
8 require is that we do a necropsy on these horses.

9 Now, that doesn't necessarily mean --  
10 California has a necropsy policy, rather, where they  
11 necropsy every horse that goes down on the racetrack,  
12 during training, whatever. It has to go to UC Davis to  
13 be necropsied. And they have gleaned quite a lot of  
14 information, very useful information, I think, that we  
15 can apply in understanding the injuries that racehorses  
16 incur.

17 But at the very least, we do have  
18 necropsy rooms at each racetrack. We can require that  
19 the horse be removed to that site. And I think we  
20 should at least do a gross necropsy. We may not get  
21 into histopathology and that type thing where  
22 they're -- obviously there's the expense there and the  
23 time involved. Not to say that it isn't worth it, but,  
24 frankly, it is quite expensive to get into. But at  
25 least from a gross perspective we should be able to

1 identify the lesion that led to the injury.

2 Now, that may be a little difficult in  
3 some cases, particularly if it's a spinal injury.  
4 Those things are sometimes hard to expose just on a  
5 field necropsy. But most lower limb -- I mean, the  
6 biggest cause or the leading cause of catastrophic  
7 injury in racehorses is suspensory failure. That's  
8 especially true on the Thoroughbred side, but it's also  
9 true on the Quarter Horse side. The knee issue on the  
10 Quarter Horse side is probably right there with it.  
11 But those things could be vetted out fairly, I think,  
12 accurately on necropsy.

13 So that's something that we're going to  
14 talk with our personnel about and maybe -- we're going  
15 to make a much more concerted effort in that area. And  
16 I think there's probably some other things going on.  
17 There's some things coming down the line that I think  
18 could be helpful to us in that discussion and that  
19 might help us prevent some of these. And at the end of  
20 the day, that's really what we'd like to accomplish is  
21 to be able to prevent them.

22 CHAIRMAN SCHMIDT: So with Mr. Wright's  
23 horse, though, that diagnosis?

24 MR. QUIRK: That diagnosis was that he  
25 had a -- actually, to use the term applied in this

1 instance, a disarticulation of the fetlock joint, which  
2 is the metacarpophalangeal joint.

3 CHAIRMAN SCHMIDT: Closed fracture,  
4 closed dislocation?

5 MR. QUIRK: It was closed, but it was  
6 comminuted and the anticipation was, on the part of our  
7 veterinarian, that it was likely to become compounded.

8 CHAIRMAN SCHMIDT: So it was -- it did  
9 not break through the skin. It was broken. But the  
10 skin was very, very thin, so it could break through the  
11 skin.

12 MR. QUIRK: As he described it to me, the  
13 bone fragment was protruding through the skin but it  
14 hadn't broken through. It was not through.

15 CHAIRMAN SCHMIDT: Please convey -- thank  
16 you very much for following up on this. And please  
17 convey to Mr. Wright that if he has any suggestions,  
18 we'll actually -- please forward them to you and we'll  
19 look at them very, very seriously.

20 MR. QUIRK: Actually, he does. And I'm  
21 in receipt of those and I'll provide you with a copy.

22 CHAIRMAN SCHMIDT: Any other questions?

23 MR. QUIRK: Thank you.

24 CHAIRMAN SCHMIDT: Next we move to a  
25 budgetary item, approval of the Commission's operating

1 budget for fiscal year 2014.

2 Mr. Jackson, can you lay this out for us,  
3 please?

4 MR. JACKSON: Yes, sir. Thank you,  
5 Mr. Chairman.

6 Commissioners, on pages 13 through 19 of  
7 your agenda packet, you will find the proposed FY 2014  
8 operating budget and cash flow statements for the  
9 agency submitted for your consideration and approval.  
10 The proposed operating budget has been prepared to  
11 support the regulation of 276 live greyhound  
12 performances, 188 live horse race dates, 2,548  
13 simulcast race dates, and the administrative operations  
14 of the Commission.

15 To accomplish these tasks, staff  
16 estimates that it will utilize 50.2 full-time  
17 positions, or FTE's, 8.345 million in appropriated  
18 costs, and 0.938 million in unappropriated costs.

19 On page 13 you will find the appropriated  
20 costs and FTE's broken down by strategy. For  
21 comparison purposes, I have prepared the document with  
22 columns showing the base appropriations and FTE's as  
23 authorized by the 83rd Legislature as well as columns  
24 showing the proposed FY 2014 operating budget  
25 appropriations and FTE's.

1                   The proposed operating budget utilizes  
2           2.4 FTE's less than has been authorized. Staff lapsed  
3           these positions to use the funds to address the  
4           following needs: Increase in other personnel costs due  
5           to additional contributions towards the State  
6           retirement system required for all State agencies by  
7           the 83rd Legislature and, second, increases in  
8           professional fees and services to provide for contract  
9           vet services as requested by our racing division.

10                   On page 14 you will find the appropriated  
11           costs broken down by object of expense. Again, for  
12           comparison purposes, I have prepared the document with  
13           columns showing the base appropriations as authorized  
14           by the Legislature as well as columns showing the  
15           proposed operating budget for this fiscal year.

16                   The lapsed FTE's and reuse of their funds  
17           results in a reduction to salaries and wages by  
18           \$49,069, a reduction to travel by 7,641, an increase in  
19           other personnel costs by 13,935, and an increase in  
20           professional fees and services by \$42,775.

21                   On page 15 you will find the  
22           unappropriated costs broken down by object of expense.  
23           These costs are not subject to transfer authority, so  
24           therefore you will not find any differences between the  
25           appropriated and those recommended by the Legislature

1 and in your proposed budget.

2 On pages 16 and 17 you will find a cash  
3 flow statement prepared for the regulatory programs of  
4 the proposed FY 2014 operating budget. And on pages 18  
5 and 19 you will find the cash flow statement prepared  
6 for the accredited Texas-bred program administered by  
7 the agency.

8 I have prepared these separately because  
9 the funding of each of these areas is unique and has  
10 dedicated revenue streams. In addition, I prepared  
11 them separately because the agency is not allowed to  
12 use the accredited Texas-bred program appropriations  
13 for any other purpose but for that. That is a rider  
14 within the agency's bill pattern.

15 The regulatory program cash flow  
16 statement shows that the agency will begin with an  
17 estimated cash balance of \$750,000, that it will  
18 collect 4.2 million in annual fees and 750,000 in other  
19 revenue, and is expected to expend an estimated 5.159  
20 million on regulatory program costs, causing us to end  
21 with a cash balance of \$544,475, slightly less than  
22 what we began with.

23 The accredited Texas-bred program, as  
24 it's a -- what we refer to as a pass-through account,  
25 begins with a zero balance, collects an estimated 4.125

1 million, and it is estimated to expend exactly that  
2 same dollar amount and then end with a zero balance.

3 This concludes my presentation on the  
4 proposed FY 2014 operating budget. I'm happy to answer  
5 any questions that you may have. And on behalf of  
6 staff, we ask for your approval.

7 CHAIRMAN SCHMIDT: Is there any public  
8 comment regarding the 2014 budget?

9 I'd certainly invite any discussion or  
10 questions by any of the Commissioners.

11 Thank you, Mr. Jackson, for a good  
12 thorough analysis.

13 I'll certainly entertain a motion to  
14 approve the Commission's operating budget for fiscal  
15 year 2014.

16 COMMISSIONER HICKS: I make the motion.

17 CHAIRMAN SCHMIDT: A motion made by  
18 Commissioner Hicks.

19 VICE-CHAIRMAN EDERER: Second.

20 CHAIRMAN SCHMIDT: Seconded by Vice-Chair  
21 Ederer.

22 There's been a motion and a second. All  
23 those in favor signify by saying aye.

24 COMMISSIONERS: Aye.

25 CHAIRMAN SCHMIDT: Anyone opposed?

1           The motion carries unanimously.

2           Thank you, Sammy.

3           Proceedings on racetracks. First we're  
4 going to have a discussion only on the following  
5 matters: Allocation of purses as provided under Rule  
6 321.505. This is the distribution of funds in the  
7 escrowed purse account among the various breeds of  
8 horses under Commission 321.509.

9           Okay. Sammy, can you lay out Items A and  
10 B for us, please?

11           MR. JACKSON: Yes, sir.

12           Commissioners, for your benefit today, I  
13 have prepared a couple of visual aids through  
14 PowerPoint, using them as a slide, but as a handout for  
15 you today. One is horse racetracks' fundamental purses  
16 and accredited Texas-bred incentive program funds, and  
17 the other is the greyhound fundamental purse and  
18 Texas-bred incentive program funds.

19           I prepared them for you because on your  
20 agenda packet today, there are several items that deal  
21 with allocation of purse money, allocation of  
22 accredited Texas-bred incentive program money. There  
23 is also approval for the TGA's recommendation of how  
24 they distribute purse money. And there's also an item  
25 of how we're going to distribute and allocate escrowed

1     purse money. The common denominator is it's either  
2     purse money or it's accredited Texas-bred program  
3     funds.

4                     So these documents, I'm going to kind of  
5     buzz through them right quick. I don't want to get  
6     into the guts of it a lot. But I've provided them for  
7     you as something that you can take home with you if you  
8     wanted to contemplate on this and think about it  
9     because we're going to be meeting at our next  
10    Commission meeting for some discussions on this and, I  
11    guess, final decision as I understand.

12                    So with that, I'm going to start with the  
13    horse one first and tell you that in preparing this, I  
14    tried to prepare this from the perspective of asking  
15    three questions: How are these funds earned? How are  
16    these funds allocated? And what is the Commission's  
17    role in the allocation process?

18                    We're starting with how are the funds  
19    earned; and if you go to page three of your packet  
20    here, you would see that they're earned from wagering  
21    components. And this actually foots back directly to  
22    the wagering statistics report that I gave to you  
23    earlier today where we break down the wagering  
24    categories between live wagering, which is on-track and  
25    off-track, on-track meaning a person at a Texas track

1 betting on a Texas race, off-track is someone betting  
2 on that Texas race from a remote location and there's  
3 purse money earned off of it and calculated  
4 differently.

5 Simulcast wagering is you're at a Texas  
6 racetrack, but you're wagering on a track from another  
7 location. If you're at a horse track and you're  
8 betting on a horse signal, we call that a same-species  
9 signal. If you're at a horse track and you're wagering  
10 on a greyhound, the act defines that as a cross-species  
11 signal.

12 Moving on, if we're going to look at how  
13 funding is -- how the purse funds are actually  
14 calculated on a live race, it's set out in the act.  
15 It's seven percent of a win, place, or show wager.  
16 It's seven percent of a Multiple 2, which we refer to  
17 as an exacta, a quinella, a daily double, or eight and  
18 a half percent of a Multiple 3 wagering pool, which is  
19 going to be your superfecta, your Pick 3's, your  
20 trifecta, what we refer to as exotic wagers.

21 The Texas-bred program funds are also set  
22 out in the act of how they're to be queued up. It's  
23 one percent of those Multiple 2 pools that I just spoke  
24 about and one percent of the Multiple 3 wagering  
25 pools.

1           In addition, it's also the breakage. And  
2 breakage, I've put the definition here. And  
3 technically what that is is whenever you do the  
4 calculations for the payoffs to pay the public on a  
5 winning ticket, there's always some rounding and they  
6 chop off and pay off to the nearest dime. Those odd  
7 cents that are left over are referred to as breakage  
8 and that's set aside for the Texas-bred program.

9           Moving on, if we're going to look at  
10 purse funds from off-track, that means our Texas signal  
11 being sold to somebody out of state. There's purse  
12 money that's derived off of it and it's derived out of  
13 the simulcast fee and that's the fee that's charged by  
14 our racetrack to that other location to take their  
15 signal. The purse amount that's set aside is set by  
16 rule and it's 37 percent of whatever that fee is.

17           Mathematically, if you wanted to work it  
18 out, the typical fee they charge is about three  
19 percent; so when you take 37 percent of that, it works  
20 out to about 1.11 percent of the handle that's set  
21 aside for purse money underneath that scenario.

22           Moving next, funding from simulcast  
23 wagering on a same species, meaning a horse track  
24 betting on a horse signal, again, the purse money  
25 that's earned off this is talked about in the act. And

1 the concept here is it says a percentage of the revenue  
2 or the takeout. So for win, place, and show wagers or  
3 the wagering pool, it's 38.8 percent of the total  
4 revenue set aside for purses. For Multiple 2 pools,  
5 it's 33.3 percent. And for the Multiple 3 wagering  
6 pools, those exotic bets, it's 34 percent.

7 From a historical perspective on this,  
8 I'm going to explain the difference as to why live is  
9 done one way and this is done this way. If you were to  
10 take the live purse computations, the seven percent of  
11 a win, place, show and divided it by the revenue, which  
12 is 18 percent, you would get to the 38.8 percent.  
13 That's how that mathematically was done in  
14 legislation.

15 But it was done on simulcasts of this way  
16 of doing it as a revenue because each state has a  
17 different takeout, so the revenue slides up and down  
18 depending on what state you're wagering on. Some are  
19 much less than Texas. Some are higher. And in that  
20 event, the purse rate adjusts to match how those states  
21 play with their takeouts. So this way of doing it is  
22 to compensate for either additional purse money when  
23 there's a higher takeout or less money when there's  
24 less takeout.

25 The Texas-bred program, it's collected

1 the same way and allocated the same way as what was  
2 done previously, so I won't get into too much detail on  
3 it.

4 Cross-species. Now, this is where our  
5 horse track is wagering on a greyhound signal.  
6 Currently in the act there is no set-aside for purse  
7 money for horses off of a greyhound signal wagered on  
8 at a horse track. The act only sets aside money for  
9 greyhound racing. And that's going to be a decision  
10 you're going to make later today when we talk about the  
11 TGA's recommendation of what money they collect from  
12 this and how they pay it out.

13 For horse purses, if there's any money  
14 set aside, it will be because of a contract between our  
15 horsemen's organization and those horse racetracks.  
16 And in fact, they do have some money currently set  
17 aside from every wager made. It's 1.25 percent of the  
18 wager.

19 Moving on, now we're going to go into how  
20 these funds are allocated, meaning, all right, purse  
21 has been earned, we've got to give it -- if you're a  
22 horse track, it has to be divided between the breeds of  
23 horses because each track can run up to as many as four  
24 breeds of horses.

25 Moving to page nine, we're going to talk

1 about on-track and off-track of that Texas race because  
2 they're done the same way. If purse money is earned  
3 off of a race, in those scenarios, it's given to the  
4 breed who ran in the race. If it's carded as a Quarter  
5 Horse race, that means the purse money went to the  
6 Quarter Horse. If it's carded as a Thoroughbred race,  
7 it goes to the Thoroughbred.

8           There is no simulcast allocation applied  
9 in this area. It all goes to the breed of which it was  
10 wagered on. Many people refer to that as "Eat what you  
11 kill".

12           Moving on, the next page, on 10, we're  
13 going to talk about simulcast wagering. This is a  
14 horse track betting on a horse signal again. This is  
15 the breed split allocation. This is the decision  
16 you're going to have before you at some point and we're  
17 going to discuss today.

18           We take in a signal from Santa Anita out  
19 in California or somebody from New York. We've  
20 wagered. We've applied the purse calculation. And now  
21 the track has the purse money, but they have to move it  
22 to one of these breed accounts. It's either going to  
23 be an Arabian account, a Quarter Horse account, a Paint  
24 Horse, or a Thoroughbred account. They have to know  
25 what that allocation split is so that they can do

1 that.

2 On the Texas-bred program side, it's the  
3 same scenario other than that the racetrack sends the  
4 money to the Racing Commission and the Racing  
5 Commission collects it and then we pay that out to the  
6 breed registries for them to pay. But there again,  
7 you're sending it to a specific breed based on an  
8 allocation that's been predetermined by the Commission  
9 or approved by the Commission.

10 Moving to the next page, we're going to  
11 talk about cross-species again. In this scenario, the  
12 horse purse is in red and I put it there to show you  
13 because it may not exist. It only exists if there's a  
14 contract. But there again, the breed split on it would  
15 either have to be determined by the contract that  
16 initiated it or by a decision here if that was not in  
17 there.

18 Moving to page 12, this is the greyhound  
19 portion of it. This is the decision on the TGA's  
20 recommendation for their allocation. And you see that  
21 they're remitting it to the three greyhound tracks.  
22 That's who they would be remitting their money to.

23 Moving on, what's the Commission's role  
24 in the allocation process? They're slightly different  
25 on each one of these; but I can tell you that when it

1 comes to live racing and the components of live racing,  
2 it's really your staff who deals with that. There's no  
3 decision that needs to come before the Commission to  
4 determine where money goes. The staff handles all that  
5 because it's all laid out in the act or our rules and  
6 we do that either daily or weekly depending on what the  
7 event is and we handle that.

8           On off-track, it's the same scenario.  
9 This is laid out in rule. Your staff handles that. We  
10 actually run this through our simulcast approval  
11 process as well. We require that tracks, when they  
12 submit a request for simulcast to export their signal  
13 to someone, that they delineate what the purse amount  
14 is based on their fee and then we follow that through  
15 and track that.

16           Same species. This is where you come  
17 involved into this because the current rule for  
18 simulcast allocation requires that the tracks will make  
19 a recommendation. They negotiate with industries. If  
20 they come up with an industry agreement, they present  
21 the industry agreement to you for ratification and  
22 approval. If there is no industry agreement, then we  
23 can either approve, by rule, the track's  
24 recommendation, ask the tracks to submit a different  
25 recommendation, or you yourselves can come up with an

1 alternative plan that you would want to consider and  
2 approve.

3                   Moving on to 17 on cross-species, here  
4 the scenario works kind of the same except for that  
5 when we deal with the greyhound purse money, there is  
6 no split between breeds because the breed of dog is a  
7 greyhound, so there's no worrying about dealing it  
8 between different ones. It's about what track it goes  
9 to for it to be paid out.

10                   The last couple of pages in here, pages  
11 19, 20, and 21, are the actual rules that cover these  
12 areas. I'm not going to read them, but I wanted to put  
13 them in here as a quick reference point for you. It  
14 kind of talks about the process and what criteria must  
15 be looked at when we do our approvals and  
16 considerations and what alternatives you have as a  
17 Commission as you flow through this.

18                   That's kind of my update and briefing on  
19 the horse side of aspects of wagering and what  
20 components to go through, Mr. Chairman.

21                   The other document that I prepared on the  
22 greyhound track is taking that same information but I  
23 focused on what you would have to decide or what  
24 decision would come before you. The only one that  
25 comes out of here in this is cross-species wagering.

1                   There is a provision within the act that  
2 requires greyhound tracks to pay a purse amount to the  
3 Racing Commission to be collected. We refer to it as  
4 the escrowed purse account. That money is collected by  
5 the Commission daily and then the horse racetracks are  
6 allowed to request from this Commission a distribution  
7 from that. And when they make that request, they have  
8 to recommend a breed split to which purse account of  
9 the breed it would go to.

10                   So this information here is just about  
11 that one scenario. I, again, followed it through  
12 consistently with what I had done previously in the  
13 horse one and put in the back actually the copy of the  
14 rule that talks about the process and the criteria.

15                   With that, that kind of goes over to this  
16 information. It was prepared, in essence, as an aid  
17 for you and to kind of give a bigger picture higher up  
18 of what goes on. And I do know that on your agenda  
19 today first up is for discussion only the simulcast  
20 purse allocation portion and escrowed purse allocation  
21 for our three Class 1 tracks and Saddle Brook Park.

22                   And with that, Mr. Chairman, if you have  
23 any questions, I'd be happy to answer them. I do  
24 realize I've given you a lot of information today.

25                   CHAIRMAN SCHMIDT: Thank you,

1 Mr. Jackson. That's exactly the purpose. This is for  
2 discussion only, just as a way of background so we're  
3 all on the same page. Normally the breeds discuss for  
4 several months and come to some type of consensus.  
5 Generally the Commission in the past has approved that  
6 consensus. But with everyone dealing with a smaller  
7 and smaller pie, the consensus has become difficult and  
8 so I fully anticipate in December that we're going to  
9 have to make the decision.

10 And so the purpose was -- for today's  
11 visit, today's first two items, was simply to provide  
12 some discussion. Usually you just get up to speed with  
13 this and then you forget it for about six months and so  
14 it's a little complex.

15 So just as a way of an overview, we're  
16 really discussing how to allocate the simulcast money  
17 between the various breeds and we'll be dealing with  
18 presentations of what -- from the various horse breeds  
19 now to educate us further. And then as you -- you may  
20 be approached during the next several months about  
21 different points of view. I fully anticipate in  
22 December there will not be an agreement reached among  
23 the breeds and we'll have to decide which course we  
24 choose. We can choose the course the Commission  
25 decides.

1                   Sammy, could you just -- Mr. Jackson,  
2                   could you just help me with one other item?

3                   MR. JACKSON: Yes, sir.

4                   CHAIRMAN SCHMIDT: Just tell me again the  
5                   ballpark figures for the monies we're dealing with.  
6                   We're talking about 16 million dollars for the  
7                   simulcast?

8                   MR. JACKSON: For simulcast of purse  
9                   money at the horse racetracks for horse racing, it's  
10                  between 14 and 16 million dollars. The escrowed purse  
11                  distribution, the money that we collect from the  
12                  greyhound tracks dedicated to horse racing, is about  
13                  800,000 to a million. And then the money that's set  
14                  aside for the TGA to be collected for their greyhound  
15                  purse is about a million dollars as well.

16                  CHAIRMAN SCHMIDT: So around 14 to 16  
17                  million is for the simulcast.

18                  MR. JACKSON: Yes, sir. That's just for  
19                  the purse side. The accredited Texas-bred program is  
20                  approximately about 2.75 million.

21                  CHAIRMAN SCHMIDT: And that's folks at  
22                  Belmont betting on Lone Star.

23                  MR. JACKSON: No, sir. That would be  
24                  folks at Lone Star betting on Belmont.

25                  CHAIRMAN SCHMIDT: Excuse me. Yeah.

1 MR. JACKSON: Yes, sir.

2 CHAIRMAN SCHMIDT: I misspoke. Great.

3 Good.

4 Any other questions of Mr. Jackson?

5 Okay. I think we probably need to go to  
6 the horse tracks for comment first. Andrea Young from  
7 Sam Houston?

8 Welcome, Andrea.

9 MS. YOUNG: Thank you. Good morning,  
10 Commissioners. Thank you for asking me to get up first  
11 and talk about this exciting issue this morning. I  
12 think Sammy offered a very thorough explanation. And  
13 it feels like we were just here having this discussion  
14 because, in reality, we were, probably less than a year  
15 ago.

16 You know, in your package you have a  
17 pretty detailed outline that we've put together that  
18 considers all of the criteria that the Commission rule  
19 tells us to evaluate. It's a very similar story to  
20 what happened last year, what we presented last year.  
21 There are some metrics that do favor the Thoroughbred  
22 breed; and in fact, our current splits, you know, do  
23 just that.

24 What we have presented and made as our  
25 recommendation to the Commission this year is to

1 maintain our current splits. The reason for that is  
2 very similar to last year when there was quite a bit of  
3 debate about this and my position really hasn't changed  
4 and that is this is a difficult time for the industry  
5 and we're fighting over a decreasing pie.

6 Any significant disruption to the splits  
7 as they are today would be detrimental to the race  
8 dates that we already have granted in 2014 because  
9 this -- these splits impact the revenues that we have  
10 on purses -- available for purses next year.

11 I think there has been considerable  
12 discussion. Last year was the first year on my watch,  
13 which is now running about six years, that we had to  
14 come to the Commission and were not able to make an  
15 agreement between all the parties. So that's  
16 disappointing because I wish we could and wouldn't have  
17 to put this before you. But I'm fairly confident that  
18 we're going to be in the same position again this year  
19 where we do come back to the Commission based on the  
20 discussions that I've been involved with for now really  
21 ongoing for a couple of years.

22 I'm happy to go into this in detail,  
23 though I don't really think that's necessary. You have  
24 it in front of you. Or I'm happy to answer any  
25 questions you might have.

1                   CHAIRMAN SCHMIDT: Any questions of  
2 Ms. Young?

3                   I just had two quick questions, Andrea.  
4 One is so you're -- we have it on our agenda.  
5 Basically it's 76, 21, 1.4, and 0.6. You're  
6 recommending the same things you did last year. Is  
7 that correct?

8                   MS. YOUNG: I'm sorry. The numbers you  
9 quoted me?

10                  CHAIRMAN SCHMIDT: 76 for the  
11 Thoroughbreds --

12                  MS. YOUNG: Yes.

13                  CHAIRMAN SCHMIDT: -- 76.4, 21.5 for  
14 Quarters, and 1.4 for the Arabians and 0.6 for the  
15 Paints.

16                  MS. YOUNG: That's correct.

17                  CHAIRMAN SCHMIDT: The second thing is we  
18 will probably vote on this on -- we will vote on this  
19 on December 10th unless there's an agreement. Your  
20 season starts when in January?

21                  MS. YOUNG: January the 17th, I believe,  
22 this year. And the reality is much of our money has  
23 already been accrued for the current Thoroughbred meet  
24 based on this year's splits since our last meet ended.  
25 It impacts the Quarter Horses a little bit more because

1 they're a little bit later in the year. But overall it  
2 does still have an impact on the years out that we've  
3 been granted already.

4 CHAIRMAN SCHMIDT: Okay. So it would  
5 affect the race dates later out.

6 MS. YOUNG: It would affect 20 -- you  
7 know, if it were different, it would affect 20 -- I  
8 would say 2014 a little bit. It would affect 2015 a  
9 lot more. But we do have our Thoroughbred dates  
10 granted for 2015 already.

11 CHAIRMAN SCHMIDT: Great.

12 MS. YOUNG: Thank you.

13 CHAIRMAN SCHMIDT: And then I don't  
14 see -- Mr. Wells?

15 MR. WELLS: Yes.

16 CHAIRMAN SCHMIDT: Welcome.

17 Mr. Wells represents Lone Star Park.

18 MR. WELLS: Yes. Thank you,  
19 Mr. Chairman, Commissioners.

20 Although I am new to my position at Lone  
21 Star Park, having taken over as president and GM on  
22 August 26th, I am not new to this debate. It's a  
23 heart-rending type of thing that you can really see the  
24 logic and the passion on both sides. Unfortunately,  
25 the last time I experienced it, it was in a case of a

1 growing pie, not a shrinking one, and I respect the  
2 difficulty of the decisions that you'll have to make.

3 We hosted a meeting on some other matters  
4 at Lone Star Park recently and we took the occasion --  
5 we took advantage of the occasion to have a meeting  
6 between the breed representatives. And I must  
7 compliment them on their professionalism and their  
8 mutual respect for each other. However, no movement  
9 was made on the anticipated or unanticipated  
10 compromise.

11 So I would agree that in the case of Lone  
12 Star Park, even though these discussions have been  
13 going on for months and years previously with my  
14 predecessor, Drew Shubeck, and with the chief operating  
15 officer of Global Gaming, which is Robert Lannert, we  
16 also chose to maintain the status quo based partly on  
17 the theory that that was at least a workable  
18 relationship that had been achieved for 2013. The fact  
19 that the dates for 2014 had already been assigned and  
20 approved, we thought it would be unwise to make any  
21 changes.

22 CHAIRMAN SCHMIDT: So welcome to Texas.

23 MR. WELLS: Thank you.

24 CHAIRMAN SCHMIDT: Just for clarification  
25 purposes then, your recommendation for 2014 is

1 Thoroughbreds 80.4, Quarter Horses 18.2, Arabians 1,  
2 and Paints 0.25.

3 MR. WELLS: That's correct, sir.

4 CHAIRMAN SCHMIDT: Great.

5 MR. WELLS: Yes, sir.

6 VICE-CHAIRMAN EDERER: Mr. Wells, just  
7 for those of us who don't know your background, could  
8 you just briefly tell us? Of course we knew Drew very  
9 well. He had been with us for a long time. But I'm  
10 sure we're going to be seeing a lot of you. So if you  
11 could, just let us know. I know that you're very  
12 experienced in this arena.

13 MR. WELLS: Okay. Well, I arrived at the  
14 business by heredity. My father was a successful  
15 Quarter Horse trainer and I myself trained Quarter  
16 Horses and Thoroughbreds for a number of years, about  
17 17 years. I did what was going to be a six-month  
18 experiment at Remington Park 23 years ago and have been  
19 in racetrack management ever since then.

20 I've been the assistant GM at Hollywood  
21 Park, general manager of Ruidoso Downs, currently the  
22 president and general manager of Remington Park in  
23 Oklahoma City, and Lone Star Park. I'm a passionate  
24 lifetime participant in this sport. I have  
25 conducted -- I've been the general manager at a couple

1 of tracks in Mexico City and Montevideo, Uruguay. So  
2 I'm not a rookie, but it still doesn't make these  
3 difficult issues any easier.

4 I am, by the way, a TCU grad and I went  
5 to school in El Paso and Weatherford, so I'm no --  
6 although I was born in Oklahoma, I do have Texas  
7 roots.

8 VICE-CHAIRMAN EDERER: Thank you.

9 CHAIRMAN SCHMIDT: Any other questions?

10 Thank you very much, sir.

11 I think those are the track  
12 representatives. Rob Werstler representing the --

13 MR. CORRADO: Good morning, Mr. Chairman,  
14 Commissioners.

15 We have a similar commentary as the other  
16 two tracks that have presented. We as well submitted  
17 our packet outlining Retama Park's position. We as  
18 well are recommending the same position and outline  
19 that we had last year.

20 We do want to note, obviously we are new  
21 to Retama Park. Clearly we just started Thoroughbred  
22 racing last weekend. So we're at somewhat of a  
23 disadvantage in not having really seen our Thoroughbred  
24 meet in 2013.

25 That being said, having gone through the

1 criteria and the -- and looking at our Quarter Horse  
2 meet in the summertime, we feel very good about what we  
3 have put forth in our packet. The recommendation that  
4 we are making for next year is 74.4 percent for the  
5 Thoroughbreds, 23.5 percent for the Quarter Horse, .5  
6 for the Paints, and 1.5 for the Arabians. So we are  
7 recommending as well status quo.

8 CHAIRMAN SCHMIDT: Thank you, sir.

9 MR. CORRADO: Thank you.

10 CHAIRMAN SCHMIDT: Any other -- any  
11 questions?

12 Great. Appreciate you being here.

13 I think we've covered the tracks. Rob,  
14 would you like to speak representing the Quarter Horse  
15 folks?

16 MR. WERSTLER: Good morning,  
17 Mr. Chairman, Commissioners. Welcome to our new staff  
18 members.

19 My name is Rob Werstler. I'm  
20 representing the Texas Quarter Horse Association. And  
21 I'm just here to report that we support the proposed  
22 purse racetrack -- or proposed purse allocations as  
23 proposed by the racetracks. So I'm here to answer any  
24 questions you may have.

25 I'm sorry. We support what is in the

1 packet as proposed by the racetracks, the escrowed  
2 purse fund as well as breed splits, simulcast breed  
3 splits.

4 CHAIRMAN SCHMIDT: So no change from last  
5 year.

6 MR. WERSTLER: Right. Status quo.

7 CHAIRMAN SCHMIDT: Okay. Good.

8 Any questions of Rob, Mr. Werstler?

9 MR. WERSTLER: Thank you.

10 VICE-CHAIRMAN EDERER: Thank you.

11 CHAIRMAN SCHMIDT: Thanks.

12 Jan Haynes for the Thoroughbred side.

13 Jan, are you here?

14 MS. HAYNES: Yes.

15 CHAIRMAN SCHMIDT: Great.

16 MS. HAYNES: Mr. Chairman, Commissioners,  
17 my name is Jan Haynes, president of the Thoroughbred  
18 HBPA. I'm here on behalf of my board and membership to  
19 state our position on breed splits.

20 In December I gave you a booklet with all  
21 the stats and numbers for each breed at each track.  
22 This year I'm not going to do that since you have all  
23 those numbers. I testified then that if you continue  
24 to dilute the Thoroughbred product by giving more money  
25 to the Quarter Horses, our breed can't survive. This

1 year's numbers prove that to be true as our numbers are  
2 down across the board at each of the tracks for 2013.

3           Conversely, the money you gave to the  
4 Quarter Horses didn't help increase their numbers at  
5 all. In fact, their numbers are down, too.

6           Also note the Thoroughbreds had to reduce  
7 race dates at two of the three Class 1 tracks for this  
8 year while Quarter Horse dates remained the same.

9           The rules state very specific criteria  
10 for determining these splits: Live attendance, live  
11 handle by breed, local and national public interest in  
12 each breed, import and export by breed, earnings  
13 generated by the association from each breed, and the  
14 racetrack race date requests.

15           The import handle should be the most  
16 important factor when determining these breed splits  
17 since it accounts for over 80 percent of the total  
18 purse structure. From the data produced by the tracks  
19 that are in your packet, you can see that the  
20 Thoroughbreds produce well over 90 percent of the  
21 revenue generated from the sale of import signals.

22           Other than food, beverage, and admission  
23 sales, these criteria have nothing to do with the  
24 track's ability to make money. It's also important to  
25 note that attendance, food, beverage, and admission

1 sales in some cases are more of a factor of the  
2 calendar placement of live dates for each breed. It's  
3 a documented fact that the Thoroughbred Triple Crown  
4 events naturally drive up attendance at the tracks even  
5 during Quarter Horse meets. Those attendance spikes  
6 would be there even if the track was not running live.

7           Nowhere in the Texas Administrative Code  
8 does it state subjective reasoning for determining  
9 these splits. The rule doesn't address sympathy as a  
10 determining factor. There is not one number to support  
11 the amount the Quarter Horses currently receive in the  
12 breed splits or the escrowed purse account. According  
13 to the guidelines set forth in the rule, that's what  
14 should be used in determining these splits.

15           There's too much emphasis on the track  
16 recommendations and not enough emphasis on the numbers  
17 set forth by the criteria. Purse money is the property  
18 of the horsemen, not the tracks. And since the  
19 Commission routinely looks to other states for guidance  
20 and uniformity of the Rules of Racing, I thought I'd  
21 look at other states to determine how they handle breed  
22 splits. And here's some examples.

23           Florida, each breed runs for what they  
24 generate. Iowa, Quarter Horses get zero from  
25 simulcasting since the breed doesn't contribute

1 anything. Louisiana, each breed runs for what they  
2 generate and they have a separate statute for gaming.  
3 Kentucky, each breed runs for what they generate.  
4 Minnesota has a 90/10 split. Oklahoma has a 90/10  
5 split.

6                   There is not one jurisdiction in North  
7 America where the Thoroughbreds have to give up 20  
8 percent of their import simulcast purse revenue to  
9 Quarter Horses in order to race in that state.

10                   The Thoroughbred horsemen respectfully  
11 request an alternative formula be used to calculate the  
12 breed splits as well as the escrowed purse account.  
13 The current rule doesn't work and is splitting the  
14 industry. The breeds are fighting almost six months  
15 out of the year because there's less purse money.  
16 We're fighting out of desperation. And with no new  
17 revenue in sight, it's just going to get worse. So I'm  
18 begging the Commission to please step up and help us.

19                   I'm asking that Texas use a formula based  
20 on the previous year's import simulcast sales at each  
21 Class 1 track, allowing each breed to run for what it  
22 actually generates. A rule change is required to put  
23 this problem behind us for good, but it's needed. Our  
24 industry won't survive without a change.

25                   Thank you.

1                   CHAIRMAN SCHMIDT: Thank you,  
2                   Ms. Haynes.

3                   Any questions of Ms. Haynes?

4                   Thank you very much.

5                   MS. HAYNES: Okay.

6                   CHAIRMAN SCHMIDT: Lane Hutchins?

7                   MS. HUTCHINS: Mr. Chairman, ladies and  
8                   gentlemen of the Commission, my name is Lane Hutchins.  
9                   I have a small breeding farm in Gillespie County. I've  
10                  been an active participant in Texas racing and in four  
11                  other states for over 20 years. For the past 10 years  
12                  I have served on the THP Thoroughbred board of the  
13                  HBPA, so I feel qualified to speak from the horsemen's  
14                  point of view about breed splits.

15                  You've heard from Jan and the numbers, so  
16                  now you need to hear from me. I took care of 14 horses  
17                  this morning before I came over here. I just thought  
18                  I'd throw that in.

19                  Karl Marx wrote over a hundred years ago  
20                  "From those according to their ability, to those  
21                  according to their need." That was the Communist  
22                  manifesto. This is what the breed splits have become.  
23                  It is an intolerable burden for our Thoroughbred  
24                  horsemen. And it is outrageous that racetracks get to  
25                  recommend what we do or what you do with our simulcast

1 money that we earn. It is not the racetrack's money.  
2 It's not your money. It is ours generated by our  
3 horses that we have paid thousands of dollars to raise,  
4 train, and maintain.

5 You are all businesspeople. I don't know  
6 all of you, but I know Dr. Martin. And I know that you  
7 all probably have your own businesses as I do, such as  
8 it is. I'll use Dr. Martin as my example. I hope he  
9 doesn't get mad at me, because he's my vet.

10 Last week I paid his clinic a vet bill  
11 and I paid it 100 percent. I didn't pay it 68  
12 percent. I didn't pay 70 percent of that vet bill.  
13 Dr. Martin, I paid the whole thing last Friday, all  
14 \$231.41. And I'm glad to have access to Dr. Martin  
15 because he's a great vet. And he gets to keep his  
16 money. And maybe he pays his electric bill or helps  
17 pay his staff or whatever. But nobody told him he had  
18 to give any of it away and to another vet who's not as  
19 successful as he is.

20 So these breed splits, as I see it, are  
21 an entitlement to keep Quarter Horse racing afloat.  
22 And it's gone on too long. If the Quarter Horses are  
23 not attractive to the betting public, it's not our  
24 fault. They've had over 20 years of our money.  
25 They've carried along. We've helped them. We've

1 carried them. But frankly, they're bleeding us dry.

2 The only goose we have laying even a  
3 rusty egg in this state right now for all of us is the  
4 Thoroughbred simulcast. We're bleeding to death.  
5 Please help us change this before Thoroughbred racing  
6 in Texas is just a memory.

7 Thank you very much.

8 CHAIRMAN SCHMIDT: Thank you very much,  
9 Ms. Hutchins.

10 Marsha Ruyle, the TTA?

11 MS. RUYLE: Good morning, Commissioners.  
12 I'm Mary Ruyle, executive director of the Texas  
13 Thoroughbred Association. On behalf of our board of  
14 directors, I would like to express our viewpoint  
15 regarding the allocation of simulcast purse funds  
16 between the various breeds.

17 It's our understanding that pursuant to  
18 Commission Rule 321.505(a), each racetrack is charged  
19 with recommending the percentages by which it will  
20 divide this purse revenue, with these recommendations  
21 subject to the approval of the Commission. We also  
22 understand that certain criteria must be considered in  
23 evaluating the proposed division of those funds and  
24 those were as Ms. Haynes just elaborated on.

25 The Texas racing industry is struggling

1 and we must explore all measures to not only sustain  
2 but to improve our opportunities for success. We  
3 believe that the rule criteria fully indicate the Texas  
4 racing industry as a whole depends on the successful  
5 Thoroughbred racing industry and, without it, all  
6 racing will suffer.

7 In reviewing each racetrack's  
8 recommendations that are included in the packet today,  
9 the objective criteria clearly favor a majority split  
10 to Thoroughbreds. You'll find that on page 23 for Lone  
11 Star, page 29 for Retama, pages 32 through 34 for Sam  
12 Houston Race Park.

13 We believe it's imperative that  
14 Thoroughbreds receive a percentage of simulcast purse  
15 allocations which is equivalent to the percentage of  
16 simulcast handle generated by Thoroughbreds. We are in  
17 full support of the efforts of the Texas Thoroughbred  
18 HBPA in seeking a reasonable and justifiable increase  
19 in purse allocations for Thoroughbreds.

20 The negotiation process for determining  
21 breed splits has been divisive and unproductive and  
22 therefore we would also support implementation of a  
23 standardized formula based on prior year facts and  
24 figures for objectively determining these breed  
25 splits.

1                   Your efforts on behalf of Texas racing  
2                   are most appreciated and I'd be happy to answer any  
3                   questions.

4                   CHAIRMAN SCHMIDT: Thank you, Ms. Ruyle.  
5                   Any questions for Mary?

6                   MS. RUYLE: Thank you.

7                   CHAIRMAN SCHMIDT: Thank you very much.  
8                   Dr. Weilburg?

9                   MR. WEILBURG: Thank you. I'm  
10                  Dr. Richard Weilburg and I have been in the horse  
11                  business one way or another for over 40 years and the  
12                  last 12 years in horse racing. I'm up here as an  
13                  exemplar of what happens when you have an imposed  
14                  charity that takes 20 percent of your income away.

15                  I have been training or raising, breeding  
16                  about 20 racehorses over the years; and I've gone, in  
17                  the last five years, from 20 horses in various stages  
18                  of training, one, two, or three on the track at all  
19                  time, down to one broodmare and one foal and we did not  
20                  breed that broodmare back. My farm is for sale. We  
21                  are going out of business in Thoroughbred racing.

22                  I implore you all to think of some way  
23                  that a new paradigm for breed splitting can be done  
24                  because the way it's currently working with an  
25                  imposed -- or an imposed 20 percent charity, we can't

1 stay in business.

2 10 years ago there were about 2500 foals  
3 born -- Thoroughbred foals born in Texas. So far this  
4 year it's my understanding we've registered under 500.  
5 We're going away. And I am an example of someone who  
6 is just about as close to not being a horseman anymore  
7 as you can get. And I want you to please consider  
8 changing this breed split, particularly on the imported  
9 simulcasts.

10 Thank you very much.

11 CHAIRMAN SCHMIDT: Thank you,  
12 Dr. Weilburg.

13 Mr. Scales?

14 MR. SCALES: Good morning. Excuse me.  
15 Good morning, Mr. Commissioner, ladies and gentlemen.  
16 My name is Theophilus Scales, Jr. I am a Thoroughbred  
17 owner and breeder here in the State of Texas. And I  
18 just wanted to say a couple of quick things.

19 Like Dr. Weilburg said, there's a lot of  
20 us that are going away. We're leaving the business.  
21 We're being forced out of the business. 2005, July  
22 14th, I claimed my first horse and got back into the  
23 horse business, a little horse at Lone Star Park called  
24 Oak Hill. And from July 14th, 2005, to today, there's  
25 been a consistent loss of dollars from Theo Scales'

1 wallet and a consistent loss of race dates, purse  
2 money, and race opportunities in the State of Texas.

3 There was 190 days of racing for  
4 Thoroughbreds in 2005. There's 110 days of allocated  
5 race dates for Thoroughbreds in 2012. It's impossible  
6 for a person to stay in business with a constant flow  
7 of losses.

8 I've heard from the tracks and heard from  
9 Mr. Werstler the words "status quo". My status quo  
10 will not -- that's -- the word "status quo," that  
11 doesn't work for me because my status quo is to go out  
12 of business. I can't survive off of the status quo.  
13 If you generate the dollars, you should get to race for  
14 the dollars.

15 The status quo is causing 500 less --  
16 less than 500 Texas-bred foals for this year. The  
17 status quo does not work. It is broken. It is  
18 severely hampered. It is a travesty to see someone  
19 like Dr. Weilburg go out of business. It is a travesty  
20 that Lane Hutchins, Theo Scales, and anybody else  
21 that's in this business that we should have to  
22 subsidize some other breed that's not generating  
23 theirs.

24 You have to -- I don't expect -- I drive  
25 buses for a living. I don't expect the guy that's

1 driving the other bus to pay me part of his salary  
2 because I'm a nice guy or because I've lost a hundred  
3 pounds or because I'm short, whatever. I don't expect  
4 that. And it should not be an expectation that  
5 Thoroughbred-generated dollars will go to subsidize the  
6 Quarter Horse industry.

7           Everybody has to stand on their own two  
8 feet. The expression was "Eat what you kill." Not  
9 necessarily my choice of expressions, but it works. If  
10 you don't earn it, you shouldn't get it.

11           I personally am appealing to this board  
12 that you guys consider -- this is not going to go  
13 away. It's not going to be resolved. We're going to  
14 have to make a decision in December. And I would love  
15 to see something that takes all of the emotions out of  
16 it, all of that, just simply the numbers. If you  
17 generate -- if your breed generates 90 percent of the  
18 revenue, your breed gets 90 percent of the dollars. If  
19 you generate 30 percent, whatever it is you get, that's  
20 what you should get, nothing else.

21           What happened 20 years ago should be  
22 irrelevant. This is a dire situation. And even if it  
23 wasn't a dire situation, in my opinion, it's a fair way  
24 of doing it. Everybody gets what they earn. There  
25 should be no subsidies. There should be no bailouts.

1 There should be no welfare. Everybody gets what they  
2 earn.

3 I thank you guys for your time. I hope  
4 that this will be considered as an alternative and that  
5 the Commission will step up and come up with a formula  
6 that will work that is fair and equitable based on what  
7 you generate. Thank you.

8 CHAIRMAN SCHMIDT: Thank you,  
9 Mr. Scales.

10 Dr. Hays?

11 MR. HAYS: Good morning, Chairman,  
12 Commissioners.

13 First of all, I want to say the Quarter  
14 Horse -- I'm president of the Quarter Horse HBPA. We  
15 agree with what's in the packet for the breed splits.  
16 And the race dates have already been set and we thought  
17 that -- the reason that we didn't contest the race days  
18 was because breed splits were agreed upon that they  
19 were going to be status quo.

20 If you look at what we're talking  
21 about -- because I've been here a long time. Sammy,  
22 you understand this. 80 percent of the money that we  
23 run for is a subsidy to the Quarter Horses and the  
24 Thoroughbreds in this state because it's someone  
25 betting not on horses in the State of Texas, but

1 they're betting on a product outside the State of  
2 Texas.

3           The Thoroughbreds have had 20 years --  
4 take Lone Star Park at 85 percent there -- to develop a  
5 breeding program and develop their Thoroughbred  
6 product. It hasn't been done. Unfortunately, we're  
7 all in a survival mode right now. Okay? So what we --  
8 what we looked at, we have three meets that are 20-day  
9 Quarter Horse meets. Those are barely viable. If you  
10 talk to the horsemen in this state, you'll understand.  
11 You can't move horses every six weeks and come out  
12 ahead.

13           The only reason that we agreed to those  
14 short meets is that we have to have time to run two  
15 futurities and two derbies at those meets and that way  
16 people can just stay here and run Quarter Horses.

17           If you look at what Jan is talking about,  
18 all the states she mentioned the numbers have slot  
19 money for subsidies. That's why they're 90/10 or they  
20 don't -- the Quarter Horses don't get part of that  
21 money is because they made agreements when they went in  
22 there to give them part of the slot money and leave the  
23 simulcast alone so they didn't have breed split fights  
24 every year. Okay?

25           And if you take -- let's just take Lone

1 Star Park, for example. The Quarter Horses run -- they  
2 have a million dollars of earned purse money there and  
3 the Thoroughbreds have about eight million, right?  
4 Seven point eight or nine million. So if you took all  
5 the money, just give the Thoroughbreds the rest of the  
6 money that we have, they could run about five more days  
7 a year and you'd decimate the Quarter Horse business.

8           Is that what we want to do? I mean,  
9 that's not -- take all the rest of the tracks. Take  
10 Retama Park. Take Sam Houston. It's the same  
11 scenario. If you give all the money, not just another  
12 seven or eight percent to them, just give them all the  
13 money, let them run three or four, five more days and  
14 then you just run the Quarter Horse business out of the  
15 state.

16           The Quarter Horse business is five times  
17 as large as the Thoroughbred business is in this  
18 state. Texas economic impact is five times more. They  
19 breed two or three hundred foals, you know. If you  
20 look at our sales prices, they're still up because our  
21 Texas Quarter Horse can be bred in this state and still  
22 go run and win races at Los Alamitos and wherever  
23 else.

24           So I'm just saying we're at a point now  
25 where the few dollars that they're asking for won't

1 make any difference to them and it will destroy --  
2 actually destroy the Quarter Horse business.

3 That's all I have.

4 CHAIRMAN SCHMIDT: Any questions of  
5 Dr. Hays?

6 Thank you.

7 Devon, anyone else signed up to speak?

8 MS. BIJANSKY: No.

9 CHAIRMAN SCHMIDT: Okay. Appreciate the  
10 tracks and we very much appreciate the public  
11 comments.

12 Again, our discussion today is a  
13 discussion, so we're going to have to make some final  
14 decisions in December. I just encourage you to go  
15 through the information we have. You'll probably be  
16 contacted by folks from the Thoroughbred side and folks  
17 from the Quarter Horse side and from the other breeds  
18 as well and we'll move forward in December.

19 Thank you very much for your public  
20 comment.

21 The next item is allocation of purses as  
22 provided under Commission Rule 321.505, Gillespie  
23 County Fair, and also distribution of funds in the  
24 escrowed purse account.

25 Sammy, could you bring us up to date,

1 please?

2 MR. JACKSON: Yes, sir.

3 Commissioners, on page 46 through 51 of  
4 your agenda packet, you will find the information  
5 submitted in accordance with Commission Rule 321.505(a)  
6 relating to the 2014 simulcast purse allocations for  
7 Gillespie County Fair. In accordance with Subsection  
8 (6), Gillespie County Fair has provided a signed  
9 industry agreement supporting their allocation  
10 recommendations.

11 If you have any questions on that, I'll  
12 be happy to answer them. I do recognize that there are  
13 some people here from Gillespie County Fair in the  
14 audience today if you'd like to have them come up and  
15 say something as well.

16 CHAIRMAN SCHMIDT: We have a signed  
17 agreement with Gillespie County, right?

18 MR. JACKSON: Yes, sir, we do.

19 CHAIRMAN SCHMIDT: Okay. Is Sally Briggs  
20 here?

21 MS. BRIGGS: Yes, sir.

22 CHAIRMAN SCHMIDT: Are you going to speak  
23 on this or have any comment? No?

24 MS. BRIGGS: I don't have any comment  
25 unless you have questions. I'll be glad to answer

1       them.  There are also two gentlemen here from the board  
2       of Gillespie County Fair.

3                   CHAIRMAN SCHMIDT:  Great.  Well, thank  
4       you then.

5                   And then public comment.  Mary?  Mary  
6       Ruyle, do you have any comment?

7                   MS. RUYLE:  I have no comment, sir.  
8       We're in support.

9                   CHAIRMAN SCHMIDT:  You just wanted to  
10      register your support.  Okay.  Thank you.

11                   So basically this is a little easier.  
12      Everyone has reached agreement.  Is there any  
13      discussion?

14                   I'll certainly entertain a motion to  
15      approve the allocation of purses and distribution of  
16      escrowed purse funds for Gillespie County Fair as  
17      described on pages 46 through 52 of the packet.

18                   VICE-CHAIRMAN EDERER:  So move.

19                   CHAIRMAN SCHMIDT:  A motion by Vice-Chair  
20      Ederer.

21                   Second?

22                   COMMISSIONER MARTIN:  Second.

23                   CHAIRMAN SCHMIDT:  Seconded by  
24      Dr. Martin.

25                   We have a motion and a second.  All those

1 in favor signify by saying aye.

2 COMMISSIONERS: Aye.

3 CHAIRMAN SCHMIDT: Anyone opposed?

4 Okay. That carries.

5 Item E, allocation of funds for the  
6 Texas-bred incentive program as provided under  
7 Commission Rule 321.505.

8 Mr. Jackson, could you lay this item out  
9 for us as well?

10 MR. JACKSON: Yes, sir, Mr. Chairman.

11 Commissioners, on pages 59 through 63 of  
12 your packet, you will find the information submitted in  
13 accordance with Commission Rule 321.505(b) relating to  
14 the 2014 allocation of funds collected for the  
15 Texas-bred incentive program from simulcasting.

16 The recognized breed registries have  
17 submitted a signed agreement in accordance with  
18 Subsection (4) of this rule for your consideration and  
19 approval. The agreement continues the previous  
20 allocation approved by the Commission for calendar year  
21 2013.

22 If you have any questions, I'll be happy  
23 to answer them.

24 CHAIRMAN SCHMIDT: Okay. Any questions  
25 of Mr. Jackson?

1                   So we have an agreement on this as well.

2                   Is there any public comment, Devon?

3                   MS. BIJANSKY: No.

4                   CHAIRMAN SCHMIDT: Great. Great.

5                   Okay. Any discussion by the Commission?

6                   I'll certainly entertain a motion to  
7 approve the allocation of funds for the Texas-bred  
8 incentive program as set out in the industry agreement  
9 on pages 53 through 57 of our packet.

10                  Is there a motion?

11                  COMMISSIONER WEINBERG: I make a motion.

12                  CHAIRMAN SCHMIDT: A motion by  
13 Commissioner Weinberg, seconded by Commissioner Hicks.

14                  We have a motion and we have a second.

15 All those in favor signify by saying aye.

16                  COMMISSIONERS: Aye.

17                  CHAIRMAN SCHMIDT: Anyone opposed?

18                  That also carries as well unanimously.

19                  Texas Greyhound Association allocation of  
20 interstate cross-species purse money.

21                  Mr. Jackson?

22                  MR. JACKSON: Thank you, Mr. Chairman.

23                  Commissioners, on pages 64 through 68 of  
24 your agenda packet, you will find the information  
25 submitted in accordance with Commission Rule 303.102(d)

1 relating to the 2014 allocation of funds collected by  
2 the Texas Greyhound Association from cross-species  
3 simulcasting conducted at the Texas horse racetracks.

4 The TGA's proposed formula would allocate  
5 100 percent of all greyhound cross-species purse money  
6 to Gulf Greyhound Park for 2014. This allocation does  
7 support the 2014 greyhound race date calendar approved  
8 by the Commission during the August 13th Commission  
9 meeting.

10 Additionally, letters of support  
11 regarding the TGA's proposed 2014 allocation have been  
12 received from each of the three greyhound racetracks  
13 and have been included in your packet today. That  
14 constitutes an industry agreement, Mr. Chairman.

15 CHAIRMAN SCHMIDT: Great.

16 MR. JACKSON: If you have any questions,  
17 I would be happy to answer them.

18 CHAIRMAN SCHMIDT: Okay. So we do have  
19 an industry agreement here.

20 Mr. James from the TGA? Are you  
21 available to speak or do you have any comments? You're  
22 all set. Great. Great.

23 Any public comment? We have no public  
24 comment.

25 Okay. Any discussion by the Commission?

1                   We have an industry agreement here. I'll  
2 certainly entertain a motion to approve the allocation  
3 of the interstate cross-species purse money as  
4 requested by the TGA.

5                   COMMISSIONER STEEN: I'll make a motion.

6                   CHAIRMAN SCHMIDT: A motion by  
7 Commissioner Steen, seconded by Mrs. Hicks.

8                   We have a motion and a second. Any  
9 further discussion?

10                  All those in favor signify by saying  
11 aye.

12                  COMMISSIONERS: Aye.

13                  CHAIRMAN SCHMIDT: Anyone opposed?

14                  Then that carries as well.

15                  Item G, allocation and amendment of live  
16 race dates under Commission Rule 303.41 for the month  
17 of November 2015.

18                  Mr. Jackson?

19                  MR. JACKSON: Thank you, Mr. Chairman.

20                  Commissioners, at the August 13th  
21 Commission meeting, you approved opening a race date  
22 application period at the request of Valley Race Park  
23 to receive race date requests for the period of  
24 November 1st, 2015, through November 30 of 2015.

25                  Staff received one application from

1 Valley Race Park and that has been included on pages 70  
2 through 75 of your agenda packet. The application, if  
3 approved, would add one live matinee performance on  
4 Saturday, November 28th of 2015.

5 The race date application was received  
6 timely and in accordance with Commission rules  
7 overseeing the race date application process.

8 And at this time I'd be happy to answer  
9 any questions you may have.

10 CHAIRMAN SCHMIDT: Any questions?

11 So we're talking about adding a single  
12 live race date for November of 2018. Andrea is  
13 available if you have any questions of her. If not,  
14 there's no public comment.

15 I'll certainly entertain a motion to  
16 approve Valley Race Park's request for a live race date  
17 to be conducted on November 28th, 2018. Is there a  
18 motion?

19 MR. JACKSON: Mr. Chairman, it's 2015.

20 CHAIRMAN SCHMIDT: I'm sorry.

21 COMMISSIONER HICKS: I'll make the  
22 motion.

23 CHAIRMAN SCHMIDT: A motion by  
24 Commissioner Hicks.

25 COMMISSIONER WEINBERG: Second.

1                   CHAIRMAN SCHMIDT:  Seconded by  
2   Commissioner Weinberg.

3                   We have a motion and a second.  All those  
4   in favor signify by saying aye.

5                   COMMISSIONERS:  Aye.

6                   CHAIRMAN SCHMIDT:  Anyone opposed?

7                   Okay.  That date is added.

8                   Ownership and management review of active  
9   racetrack licenses under Commission Rule 309.53,  
10  Gillespie County, Gulf Greyhound Park, Saddle Brook  
11  Park, and Valle de los Tesoros.  We'll move from  
12  Mr. Jackson to Mr. Fenner.

13                   Thank you, Mr. Jackson, for your service  
14  today.

15                   MR. JACKSON:  Thank you, sir.

16                   CHAIRMAN SCHMIDT:  Mark, can you lay this  
17  item out for us?

18                   MR. FENNER:  Yes, sir.

19                   Commissioners, recent changes to the  
20  Racing Act and followed up by changes to the rules to  
21  implement that require that the Commission reviews the  
22  active racetrack licenses, the ownership and management  
23  of those licenses, at least once every five years.  And  
24  so as part of the rulemaking process you established,  
25  these four licenses are the ones that are eligible for

1 review this year.

2 As part of the review -- rule review  
3 process, the staff gathered information from the  
4 racetracks and we prepared this summary of the  
5 materials that you find beginning on page 77 of your  
6 materials.

7 We reviewed the management and the  
8 concession and the totalisator contracts. We reviewed  
9 the security plan and we reviewed the backgrounds of  
10 the officers and directors plus any owner of five  
11 percent or more in the racetrack. We also compiled a  
12 summary of the inspection reports of those racetracks  
13 over the last five years. And then we provided  
14 information on any other relevant information about  
15 that racetrack that we found during the review.

16 So if I can just walk you through just  
17 the highlights of the findings regarding each  
18 racetrack.

19 Gillespie County Fair is a Class 3  
20 license that was issued in 1989. It is a nonprofit  
21 fair. That's what a Class 3 is. And it is governed by  
22 a -- a Class 3 is a nonprofit. It is governed by a  
23 36-member board and a nine-member executive board. The  
24 executive board members also are licensed by the  
25 Commission as officers. Therefore, we have current

1 background information on everybody who is on the  
2 executive board and we reviewed it and found no  
3 disqualifying information on any member.

4           Gillespie County Fair has two different  
5 types of operations going on at its facility. It has a  
6 live racing component and it also has a simulcasting  
7 component going on at The Race Barn. And the live  
8 racing component is operated entirely by volunteers  
9 there at the facility. The Race Barn component is  
10 operated by Texas Pari-Mutuel Management through a  
11 contract with Gillespie County Fair. And Texas  
12 Pari-Mutuel Management, of course, is the company that  
13 also operates Gulf Greyhound Park.

14           We have reviewed the various contracts  
15 and they are all up to date. That includes the  
16 simulcasting and the management contracts. We reviewed  
17 the security plan. And our inspection reports over the  
18 last five years have revealed no issues that weren't  
19 resolved in a timely fashion.

20           Gulf Greyhound Park is a greyhound  
21 license that was issued in 1990. It is owned 52  
22 percent by Texas residents and 48 percent by residents  
23 of Alabama. And it is managed by that 48 percent  
24 Alabama ownership, which is Texas Pari-Mutuel  
25 Management. The association itself is managed by a

1 seven-member board, four of which are Texas residents.

2 The background checks were completed by  
3 DPS and we found no disqualifying information on any of  
4 the owners or officers. The contracts and the security  
5 plans are up to date. And the inspection issues, like  
6 at Gillespie County Fair, when there's been an issue,  
7 they've been timely resolved by the association.

8 Saddle Brook Park has a Class 2 horse  
9 racetrack license that was issued in 1989 and it has  
10 seven total owners. 63 percent of the association is  
11 owned by a Texas resident, Drew Alexander. 30 percent  
12 is owned by a Kentucky resident who is Drew's brother,  
13 Lynn Alexander. And the background checks on all the  
14 owners are up to date.

15 We've reviewed the contracts and security  
16 plans and they are up to date. The security plan is  
17 not for a total racetrack. It's really for the  
18 temporary location at which they're conducting  
19 simulcasting right now. That will be updated assuming  
20 that they move to a full track in the future.

21 There have been -- there's no inspection  
22 problems. There have been a number of simulcasting  
23 violations over the course of the past year, but they  
24 are addressing that through training and changing their  
25 policies as they go along. It's kind of startup issues



1 to try and answer them.

2 CHAIRMAN SCHMIDT: Just to summarize,  
3 with respect to all four parks, there's no major issues  
4 in regard to management.

5 MR. FENNER: That's correct, sir.

6 CHAIRMAN SCHMIDT: Great. Thank you,  
7 Mark.

8 We don't have -- we don't have any  
9 scheduled public comment.

10 Any discussion by the Commission? Any  
11 questions?

12 Okay. Then I'll certainly entertain a  
13 motion -- Mr. Moltz. I'm sorry.

14 MR. MOLTZ: I'm sorry. I filled out a  
15 card just for questions, but I just noticed something  
16 in the report here. I don't think it changes anything,  
17 but I wanted to correct something or at least clarify  
18 it so the Commission has accurate information in front  
19 of them.

20 CHAIRMAN SCHMIDT: Appreciate that.

21 MR. MOLTZ: With respect to VDLT, this is  
22 on page 11 of 12 of the report, page 87 in the  
23 documents.

24 At least the implication here in the  
25 second paragraph here is that the general partner is

1 owned by Hidalgo Muy Buena Suerte and that -- well, the  
2 structure of that company is it's a limited partnership  
3 of Valle de los Tesoros which is managed by its general  
4 partner which is Valle de los Tesoros, LLC. The same  
5 partners own the LLC that own the limited partnership.  
6 Hidalgo Muy Buena Suerte owns a majority of both, but  
7 it's not the sole owner, which is what this seems to be  
8 saying.

9 I don't think that changes anything, but  
10 I wanted to make sure that there wasn't some error in  
11 the record here as far as what -- who owns the  
12 company.

13 CHAIRMAN SCHMIDT: Okay. What page was  
14 that again?

15 MR. MOLTZ: It was on page 11 of the  
16 executive director's report.

17 CHAIRMAN SCHMIDT: Okay. Great. Thank  
18 you for calling that to our attention. And if we could  
19 just correct the record in that regard.

20 MR. FENNER: Yes, sir.

21 MR. MOLTZ: Thank you.

22 CHAIRMAN SCHMIDT: Any further public  
23 comment or discussion by the Commission?

24 Great. I think all of these reviews have  
25 met the criteria under Commission Rule 309. I'll

1 certainly entertain a motion to schedule the next  
2 ownership and management review of Gillespie County  
3 Fair, Gulf Greyhound Park, Saddle Brook Park, and Valle  
4 de los Tesoros for 2018.

5 Is there a motion?

6 COMMISSIONER HICKS: I'll make a motion.

7 CHAIRMAN SCHMIDT: A motion by  
8 Commissioner Hicks.

9 COMMISSIONER STEEN: Second.

10 CHAIRMAN SCHMIDT: Seconded by  
11 Commissioner Steen.

12 Any further discussion?

13 All those in favor signify by saying  
14 aye.

15 COMMISSIONERS: Aye.

16 CHAIRMAN SCHMIDT: Anyone opposed?

17 Okay. That motion carries as well.

18 The next item, I, review of the license  
19 designation of Valle de los Tesoros as required under  
20 Commission Rule 309.51.

21 Mark, please lay this item out for us as  
22 well.

23 MR. FENNER: Yes, sir.

24 Commissioners, when we went through the  
25 rulemaking process for designating racetrack licenses

1 as active or inactive, the Commission put into the rule  
2 Subsection (f), a requirement that if a racetrack  
3 license is granted live race dates but then fails to  
4 conduct those live race dates, then the Commission  
5 shall review and may change the designation of that  
6 license and needs to do that review within four  
7 calendar months of the failure to conduct those live  
8 race dates.

9 Now, in 2012 the Commission did grant six  
10 live race dates to Valle de los Tesoros for 2012. I'm  
11 sorry. That's a typo. That should be 2013. These  
12 race dates should be conducted August 17th through 19th  
13 and August 24th through 26th of 2013, and Valle de los  
14 Tesoros did not conduct those live race dates.

15 Now, in looking at the rule, the method  
16 by which the designation of a racetrack is determined  
17 is set out in the definitions. Racetracks are either  
18 active-operating, active-other, and if they're not  
19 active-operating or active-other, then they must be  
20 designated as inactive.

21 In applying the situation that VDLT is  
22 in, they can't be designated as active-operating  
23 because it has not conducted any live race dates in the  
24 previous year. However, it could be designated or have  
25 the designation continued of that license as

1 active-other. They do have live race dates granted to  
2 them for 2014. And the same types of issues that were  
3 present when the Commission designated them as  
4 active-other last year are still present.

5           And those are the types of things that  
6 they are -- they have the financial wherewithal  
7 necessary to construct the track. They do own the real  
8 property of the location. And the evidence that the  
9 Commission considered last time was the evidence VDLT  
10 presented about its efforts with the Cities of Hidalgo  
11 and McAllen to arrange for water and sewer service,  
12 their previous efforts to operate a temporary  
13 simulcasting location in McAllen, and then, of course,  
14 their continuing efforts to participate with the  
15 Commission at its meetings and its committee meetings  
16 to develop new ideas to support the industry.

17           Now, I know that VDLT has submitted a  
18 letter in support of their request to be continued to  
19 be designated as active-other. That appears on page 93  
20 of the packet. And I understand Mr. Moltz is prepared  
21 to present additional information on that as well.

22           CHAIRMAN SCHMIDT: Okay. So thank you  
23 very much.

24           Any questions of Mr. Fenner?

25           Okay. Mr. Moltz?

1                   MR. MOLTZ: Thank you, Mr. Chairman,  
2                   Commissioners.

3                   I don't have a whole lot to add to what  
4                   Mr. Fenner pointed out and what Mr. LaMantia has in his  
5                   letter here. We do request that the active-other  
6                   designation be continued.

7                   With respect to the good faith efforts,  
8                   we have been coming to this Commission for quite a  
9                   while about the utilities. We needed utilities. Well,  
10                  they finally started. They've let the contracts to  
11                  design and then construct utilities. There is a letter  
12                  in your packet from the City of McAllen to that  
13                  effect.

14                  Also I believe VDLT would like to have  
15                  temporary simulcasting. We've come here before. We've  
16                  got another application sitting on my desk actually or  
17                  on Mr. LaMantia's desk waiting for two things. One is  
18                  trying to figure out what the PUC is going to do with  
19                  some certain wires, which VDLT has intervened in a PUC  
20                  proceeding that has it going right across their piece  
21                  of property; secondly, some indication that the result  
22                  would be different if it came up again.

23                  It came once and it was denied and it's  
24                  still the same place, the same context. So we're  
25                  trying to work through that. We believe there were

1 good faith efforts. Certainly VDLT is not just sitting  
2 around watching, doing nothing. We believe that it's  
3 within your discretion, honestly, to go either way on  
4 it and we request that it be maintained where it is.

5 If there's any questions, I'll try to  
6 answer them.

7 CHAIRMAN SCHMIDT: Does anyone have any  
8 questions of Mr. Moltz?

9 VICE-CHAIRMAN EDERER: The original  
10 request has been filed for some time, of course, and  
11 you keep saying that there are good faith efforts going  
12 forward. Tell me what those good faith efforts are.

13 MR. MOLTZ: Well, good faith efforts are  
14 keeping --

15 VICE-CHAIRMAN EDERER: This is from July  
16 31st of '12 is when you were originally asking for the  
17 active or inactive status. It's been over a year.

18 MR. MOLTZ: Well, I'd say keeping a piece  
19 of property there vacant to put a racetrack on,  
20 arranging with the City of McAllen to finally get  
21 utilities brought out to that property, opposing an  
22 activity that would -- I won't say completely kill the  
23 idea. That's these 345-kilowatt wires going across  
24 it -- but I will say will thwart the situation and  
25 we're working through as to how to work through that,

1 putting together an application for a temporary  
2 simulcast facility. I understand that hasn't been  
3 filed now, but I will represent that it's put  
4 together.

5 VICE-CHAIRMAN EDERER: How long has it  
6 been put together?

7 MR. MOLTZ: It wasn't just yesterday. I  
8 mean, it was -- I'm trying to remember exactly. It's  
9 been probably a few months. Let me say at least that  
10 long. I honestly don't remember exactly when it was  
11 blessed and said "We're not going to work on this  
12 anymore." I don't remember, Commissioner. It wasn't  
13 real recently, but it was within the last year. That's  
14 for sure.

15 VICE-CHAIRMAN EDERER: But nothing has  
16 happened.

17 MR. MOLTZ: Nothing has happened in what  
18 respect?

19 VICE-CHAIRMAN EDERER: As far as going  
20 forward with the possible simulcasts.

21 MR. MOLTZ: Well, if this Commission were  
22 to give us an indication that -- well, let me back up  
23 here.

24 VDLT is ready, willing, and able to do  
25 it. They had one previously. They had the site. They

1 spent a lot of money. And you know what happened  
2 there. You know, with some sort of indication -- let  
3 me put it to you this way. We could file it and come  
4 back and go through the whole thing all over again if  
5 that's what -- we'd like some indication that perhaps  
6 the result would be different. And we're trying to  
7 work through that to see where the industry goes, what  
8 the economics do, what the horsemen want to do.

9 And, you know, it's filable. Let me say  
10 that. It hasn't not been filed because VDLT doesn't  
11 want to put the facility there. And if the Commission  
12 wants them to put the facility there, then there we  
13 go. Apparently last time we were here, you didn't.

14 VICE-CHAIRMAN EDERER: And that's what's  
15 preventing you from putting the facility there? Is  
16 that the only thing preventing you from putting the  
17 facility there is the Commission's -- your conceived --

18 MR. MOLTZ: That's my understanding. I  
19 mean, if I went back to Mr. LaMantia and the other  
20 managers this afternoon and said "This Commission looks  
21 like they would approve it," I suspect it would be  
22 filed. That's not ultimately my decision, but that's  
23 my understanding.

24 COMMISSIONER ABER: Last time I made the  
25 motion for them to do this. Right now I'm leaning

1 toward inactive.

2 VICE-CHAIRMAN EDERER: What are the  
3 repercussions of going inactive?

4 MR. FENNER: It's just a status. I mean,  
5 there's no substantial -- the most substantial change  
6 is that they will have to undergo an annual review and  
7 renewal rather than a five-year ownership and  
8 management review.

9 MS. O'CONNELL: In this situation, if  
10 they continue to not run their live race dates and, in  
11 fact, we are going to have this issue come up annually,  
12 so the only -- the advantage to having them be, from  
13 the Commission's perspective, classified as inactive is  
14 that we -- is that our review is a little more in depth  
15 and allows us to just be a little bit more informed  
16 about the progress as it is happening. Is that --

17 MR. FENNER: Yes, ma'am.

18 CHAIRMAN SCHMIDT: Mr. Moltz, I had a  
19 couple of questions for you.

20 MR. MOLTZ: Yes, sir.

21 CHAIRMAN SCHMIDT: You say you had  
22 another application for another, we'll say, preopening  
23 simulcast facility. Is it at the same location that  
24 you previously submitted?

25 MR. MOLTZ: Actually the application, as

1 prepared, does not have a specific location. What we  
2 were hoping to do would be to get an indication from  
3 the Commission -- and I realize this is somewhat  
4 problematic from a legal perspective.

5 CHAIRMAN SCHMIDT: Yes, sir.

6 MR. MOLTZ: But a "Yeah, if you put it  
7 over here, this would be okay" rather than for us to  
8 guess, we put it here, and you say "No. That's wrong.  
9 Put it there," some sort of idea of what the concept,  
10 and then we can find a site and acquire the site. I  
11 mean, that's not a problem really. I think finding a  
12 site is not the problem. It's finding a site that the  
13 Commission would approve without guidance on what the  
14 Commission wants to see. That's sort of where we were  
15 going, Mr. Chairman.

16 CHAIRMAN SCHMIDT: Mark?

17 MR. FENNER: Mr. Chairman, as I recall,  
18 one of the issues that the Commission considered in  
19 making the determination not to approve the temporary  
20 location was there wasn't strong assurance that the  
21 temporary location would lead to live racing, that  
22 there would be a live track built.

23 So I mean, Mr. Moltz, is there new -- has  
24 that changed?

25 MR. MOLTZ: I don't believe VDLT's very

1 up-front position of building a live racetrack and  
2 getting it going and the criteria for that has  
3 changed. So I will leave Mr. LaMantia with his words  
4 and not try to paraphrase him.

5 CHAIRMAN SCHMIDT: I think the other  
6 issue -- and I just have two quick comments. One was I  
7 think at that -- because I can remember that very  
8 clearly. I think there's a bias by the Commission --  
9 and this is an independent Commission, strong-willed  
10 and clear thinking, so I'm not speaking for my other  
11 Commissioners -- that they tend to favor built  
12 structures that are operating when considering the  
13 application of a new facility.

14 So I think as -- that other facility  
15 which you had rented in a strip mall to open up  
16 temporary or preopening simulcasting, I think it  
17 interfered with one of the local greyhound tracks, as I  
18 recall, that was open and operating.

19 MR. MOLTZ: Yes, Mr. Chairman, that was  
20 one of the issues was Valley Race Park's proximity to  
21 it. But Valley Race Park in Harlingen is still going  
22 to be the same distance from McAllen.

23 CHAIRMAN SCHMIDT: Okay. I'm just  
24 telling you in the future I think you'll always see a  
25 view by the Commission or this Commission that will

1 favor existing structures versus planned or theoretical  
2 structures when looking at your location.

3 And I'll also tell you, just my personal  
4 comment and it may be the lone vote you have, that I'm  
5 going to vote to keep you active-other for another  
6 year. And I just want to make sure you understood why,  
7 my thinking, and so that we don't come here if we come  
8 here in another year from now.

9 I remember that meeting very clearly and  
10 it was a little awkward for me because it was my first  
11 meeting as the chairman. And Mr. LaMantia had  
12 purchased rental space. I think he had made some  
13 improvements in that facility. And we had the pleasure  
14 of telling him to close his business down.

15 And to the extent in which there may have  
16 been a signal from the Commission prior to that that  
17 that would have been a reasonable location, I felt some  
18 angst or some awkwardness because we had a new  
19 Commission chairman, we had a new director, and that's  
20 the reason I voted last year for -- to keep you as  
21 active-other and that's why I'm going to vote for that  
22 this year.

23 But I do want to let you know that I  
24 consider my debt closed after this vote; and if, by  
25 chance, we come back next year in this same

1       circumstance and we don't see active motion, my view  
2       will be different.

3                       Now, the other Commissioners have other  
4       perspectives, but I just wanted to be very open and up  
5       front with you.

6                       Any other comments?

7                       MS. O'CONNELL: We believe that your  
8       license is better classified as inactive and we do want  
9       to praise you for the progress and the continuing to  
10      work on this that you're doing. We feel like the rate  
11      of that is more appropriate for you to be inactive and  
12      be renewed as inactive. And should something happen  
13      where a temporary simulcasting facility is granted,  
14      then that would be a game changer. And of course, any  
15      time, when that happened, you could be reclassified as  
16      active-other. So I just wanted to let you know that.

17                      COMMISSIONER ABER: I agree with that  
18      because I made a motion to make them active-other and I  
19      think it would be better to be inactive.

20                      VICE-CHAIRMAN EDERER: And the  
21      repercussions? We can turn around and make them active  
22      any time we want to. Is that correct?

23                      MR. FENNER: Yes, sir.

24                      VICE-CHAIRMAN EDERER: On just a mere  
25      application or a request.

1                   MR. FENNER: It would be very similar  
2 like the treatment of Saddle Brook Park, which was  
3 originally inactive, and then once they had --

4                   VICE-CHAIRMAN EDERER: They were ready to  
5 go. We were ready to go. We went with them  
6 immediately.

7                   MR. FENNER: Yes, sir.

8                   VICE-CHAIRMAN EDERER: And of course, the  
9 biggest problem with the simulcasting license is the  
10 conflict with the greyhound track, the location. And  
11 of course, that continues, doesn't it? I mean, that  
12 track is still active.

13                   MR. FENNER: Yes, sir.

14                   VICE-CHAIRMAN EDERER: I see nodding of  
15 the head of Andrea back there that the track is  
16 definitely still active.

17                   MR. FENNER: They don't -- Valle de los  
18 Tesoros, of course, could open a temporary  
19 simulcasting -- well, a simulcasting facility on the  
20 regular racetrack site and they don't need Commission  
21 approval for that. It's the temporary location that  
22 requires Commission approval.

23                   VICE-CHAIRMAN EDERER: Right. And we can  
24 give that at any time there's a request.

25                   MR. FENNER: Sure.

1                   VICE-CHAIRMAN EDERER: We can change the  
2     status.

3                   Okay. Thank you.

4                   CHAIRMAN SCHMIDT: Any more questions of  
5     Mr. Moltz?

6                   Thank you, sir.

7                   Any further discussion by any of the  
8     Commissioners?

9                   We have two motion options. I'll  
10    certainly entertain a motion from someone regarding  
11    either option.

12                  COMMISSIONER ABER: I'll make a motion  
13    that we make them inactive.

14                  CHAIRMAN SCHMIDT: Okay. So there's a  
15    motion on the floor to redesignate the license of Valle  
16    de los Tesoros as inactive. That's made by Dr. Aber.

17                  Is there a second?

18                  MS. O'CONNELL: Second.

19                  CHAIRMAN SCHMIDT: Seconded by  
20    Commissioner O'Connell.

21                  Any further discussion?

22                  All those in favor signify by saying  
23    aye.

24                  COMMISSIONERS: Aye.

25                  CHAIRMAN SCHMIDT: All those opposed?

1 One.

2 COMMISSIONER HICKS: And me.

3 CHAIRMAN SCHMIDT: Let's just do --

4 excuse me. Let's just do a roll call vote then.

5 MR. FENNER: Mary?

6 MS. WELCH: I'm sorry.

7 CHAIRMAN SCHMIDT: Could you just call

8 the roll?

9 MS. WELCH: Sure.

10 Commissioner Ron Ederer?

11 VICE-CHAIRMAN EDERER: Aye.

12 MS. WELCH: Commissioner Cynthia Leon?

13 MS. LEON: No.

14 MS. WELCH: Commissioner Ann O'Connell?

15 MS. O'CONNELL: Aye.

16 MS. WELCH: Commissioner Gloria Hicks?

17 COMMISSIONER HICKS: No.

18 MS. WELCH: Commissioner Vicki Weinberg?

19 COMMISSIONER WEINBERG: No.

20 MS. WELCH: Commissioner Michael Martin?

21 COMMISSIONER MARTIN: No.

22 MS. WELCH: Commissioner John Steen?

23 COMMISSIONER STEEN: Aye.

24 MS. WELCH: Commissioner Gary Aber?

25 COMMISSIONER ABER: Aye.

1 MS. WELCH: Chairman Robert Schmidt?  
2 CHAIRMAN SCHMIDT: No.  
3 Five-four?  
4 MS. WELCH: Uh-huh.  
5 CHAIRMAN SCHMIDT: Five-four defeated?  
6 MS. WELCH: Yes.  
7 CHAIRMAN SCHMIDT: Is there another  
8 motion then by any of the Commissioners? I'll  
9 certainly entertain a motion to leave the designation  
10 as active-other.  
11 MS. LEON: I'll make a motion.  
12 CHAIRMAN SCHMIDT: Okay. We have a  
13 motion.  
14 Is there a second?  
15 COMMISSIONER HICKS: I'll second.  
16 CHAIRMAN SCHMIDT: Commissioner Leon.  
17 And seconded by Commissioner Hicks.  
18 Okay. Let's just do a roll call again,  
19 please.  
20 MS. WELCH: Commissioner Ron Ederer?  
21 VICE-CHAIRMAN EDERER: Aye.  
22 MS. WELCH: Commissioner Cynthia Leon?  
23 MS. LEON: Aye.  
24 MS. WELCH: Commissioner Ann O'Connell?  
25 MS. O'CONNELL: Nay.

1 MS. WELCH: Commissioner Gloria Hicks?

2 COMMISSIONER HICKS: Aye.

3 MS. WELCH: Commissioner Vicki Weinberg?

4 COMMISSIONER WEINBERG: Aye.

5 MS. WELCH: Commissioner Michael Martin?

6 COMMISSIONER MARTIN: Aye.

7 MS. WELCH: Commissioner John Steen?

8 COMMISSIONER STEEN: Nay.

9 MS. WELCH: Commissioner Gary Aber?

10 COMMISSIONER ABER: No.

11 MS. WELCH: Chairman Schmidt?

12 CHAIRMAN SCHMIDT: Aye.

13 So that carries. That carries.

14 Okay. Moving forward to discussion of  
15 rulemaking. Commissioner O'Connell?

16 MS. O'CONNELL: We have a couple of rules  
17 on the agenda and we have two rule proposals that are  
18 required to -- for the rules are required to be amended  
19 by statute, statutory changes that have happened at the  
20 Legislature. Those are proposals to amend Rule 307.64,  
21 Penalties, and 307.69, which is the review by the  
22 executive secretary.

23 CHAIRMAN SCHMIDT: Mark, can you lay the  
24 item out for us, please?

25 MR. FENNER: Yes, sir.

1           As Commissioner O'Connell described, the  
2 changes that are being proposed to those first two  
3 rules are to bring them into conformity with changes to  
4 the Racing Act. And what they do is they increase the  
5 penalty authority for the stewards and for the  
6 executive director, which are currently limited to  
7 \$5,000 and one year for the stewards and \$10,000 and  
8 two years for the executive director.

9           Now it will be five years suspension  
10 authority for both the stewards and the executive  
11 director. The stewards can impose a financial penalty  
12 of up to \$25,000 and the financial penalty by the  
13 executive director up to \$100,000. And this is a  
14 change brought to the statute to permit the Commission  
15 to have the type of authority that would be consistent  
16 with that described in RCI's model rules.

17           CHAIRMAN SCHMIDT: This primarily -- I  
18 mean, it can apply to anything, but basically this has  
19 evolved out of the use of designer drugs?

20           MR. FENNER: Yes, sir, that's a fair --

21           CHAIRMAN SCHMIDT: It gives us more  
22 authority and more consequences.

23           MR. FENNER: The change that is being  
24 proposed to Rule 319.3, Medication Restricted, is  
25 really to allow the executive director to publish a

1 list of controlled therapeutic medications that are  
2 consistent also with RCI recommendations. And the  
3 problem is that the current rule says that he can  
4 publish a list that contains trace levels; but when it  
5 comes to the NSAID's, the nonsteroidal  
6 antiinflammatories, there is a little bit more than a  
7 trace level left in there.

8 So in order to allow him to permit  
9 flunixin and ketoprofen on the list of controlled  
10 therapeutics, what we would propose to do is strike the  
11 word "trace" out of that rule and then go ahead and  
12 strike the section relating to phenylbutazone because  
13 that's also an NSAID. So he would be able to address  
14 all three of those NSAID's through the authority  
15 granted to him elsewhere in this rule. This, again,  
16 would be consistent with the RCI standards.

17 CHAIRMAN SCHMIDT: This has evolved  
18 because different animals metabolize these drugs --  
19 most metabolize them in the middle of the bell curve,  
20 but there are a few animals on each end that metabolize  
21 more slowly and quickly. They can have a little bit  
22 left, right?

23 MR. FENNER: I'll defer to you on that.

24 CHAIRMAN SCHMIDT: Okay. Great.

25 MR. FENNER: Then those are the rule

1 proposals that are up for publication in the Texas  
2 Register for public comment.

3 CHAIRMAN SCHMIDT: Is there any public  
4 comment on these rules at all?

5 All we're really asking to do is just  
6 publish them for public comment.

7 So, Commissioner O'Connell, any thoughts,  
8 recommendations?

9 MS. O'CONNELL: No. I'm ready to make a  
10 motion.

11 CHAIRMAN SCHMIDT: Good.

12 Okay. Then I'll certainly entertain a  
13 motion to publish the rule proposals described in  
14 Agenda Items VI-B, C, and D in the Texas Register for  
15 public comment.

16 A motion by Commissioner O'Connell.

17 VICE-CHAIRMAN EDERER: Second.

18 CHAIRMAN SCHMIDT: Seconded by Vice-Chair  
19 Ederer.

20 All those in favor signify by saying  
21 aye.

22 COMMISSIONERS: Aye.

23 CHAIRMAN SCHMIDT: Anyone opposed?

24 We'll publish those rules.

25 MR. FENNER: Thank you, sir.

1                   CHAIRMAN SCHMIDT:  Item E, rule  
2                   adoptions.

3                   MR. FENNER:  Yes, sir.  We have one rule  
4                   change that's eligible for adoption today.  This is a  
5                   change to 319.5, Report of Treatment by Veterinarians.  
6                   And it would amend the rule to allow the Commission  
7                   veterinarian to examine the treatment reports of the  
8                   backside veterinarians and that would also become part  
9                   of the confidential investigatory files of the  
10                  Commission.

11                  This was published in the Texas  
12                  Register.  We did not receive any written comments in  
13                  response to the publication.  It was discussed at the  
14                  rules committee meeting.

15                  CHAIRMAN SCHMIDT:  We don't have any  
16                  public comment.

17                  Okay.  Any further discussion by any of  
18                  the Commissioners?

19                  Okay.  I'll certainly entertain a motion  
20                  to adopt the amendment to Rule 319.5 as has been  
21                  previously published in the Texas Register.

22                  MS. O'CONNELL:  So move.

23                  CHAIRMAN SCHMIDT:  A motion by  
24                  Commissioner O'Connell, seconded by Dr. Aber.

25                  All those in favor signify by saying

1 aye.

2 COMMISSIONERS: Aye.

3 CHAIRMAN SCHMIDT: Anyone opposed?

4 Okay. Rule reviews. Mark, can you lay  
5 out the items regarding Chapter 309, Racetrack Licenses  
6 and Operations, and Chapter 311, Other Licenses?

7 MR. FENNER: Yes, sir. Both of these --  
8 well, I'll just say that the Texas Government Code  
9 requires each agency to review their rules at least  
10 every four years to make sure that the reasons for that  
11 rule are still in place and that the rule is still  
12 applicable and accurate.

13 These rule reviews for 309 and 311 began  
14 in 2012. You'll see on pages 110 through page 115 all  
15 the rules that are in each chapter and we've notated on  
16 each rule whether there was any changes that were  
17 made.

18 At this point we've received no comments  
19 other than the changes that were made, no requests for  
20 any other changes in these chapters, and we believe the  
21 rule review is complete and is eligible for readoption  
22 by the Commission.

23 CHAIRMAN SCHMIDT: Are there any  
24 questions of Mr. Fenner?

25 There's no public comment.

1 I'll certainly entertain a motion to  
2 readopt the rules within Chapters 309 and 311.

3 MS. O'CONNELL: So moved.

4 CHAIRMAN SCHMIDT: A motion by  
5 Commissioner O'Connell.

6 VICE-CHAIRMAN EDERER: Second.

7 CHAIRMAN SCHMIDT: Seconded by Vice-Chair  
8 Ederer.

9 All those in favor signify by saying  
10 aye.

11 COMMISSIONERS: Aye.

12 CHAIRMAN SCHMIDT: Again, Commissioner  
13 O'Connell, I just want to express my appreciation to  
14 you. The rules committee is a hard committee and I  
15 really appreciate your service. It's difficult working  
16 through this.

17 Opening of rule reviews, Chapter 313 and  
18 315. Mr. Fenner, can you bring us up to date?

19 MR. FENNER: Yes, sir. These would be  
20 the next chapters that are due for review. The last  
21 review was in 2009. These are the rules relating to  
22 horse racing and to greyhound racing. We would like to  
23 publish a notice in the Texas Register that we're  
24 opening the rule review and solicit any request for  
25 changes and, with your approval, will do so.

1                   CHAIRMAN SCHMIDT: So all we're asking is  
2 just to notify the Texas Register so people can review  
3 this.

4                   So any further discussion?

5                   I'll certainly entertain a motion to  
6 publish Chapters 313 and 315 in the Texas Register for  
7 rule review and request public comment.

8                   A motion by Commissioner O'Connell,  
9 seconded by Vice-Chair Ederer.

10                  All those in favor signify by saying  
11 aye.

12                  COMMISSIONERS: Aye.

13                  CHAIRMAN SCHMIDT: No one opposes.

14                  We've had our executive session.

15                  Our next Commission meeting will be  
16 Tuesday, December 10th, at 10:30.

17                  It's now 12:40 and we're adjourned.

18                  (Proceedings concluded at 12:39 p.m.)

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1 STATE OF TEXAS )

2 COUNTY OF TRAVIS )

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4 I, SHERRI SANTMAN FISHER, a Certified Shorthand  
5 Reporter in and for the State of Texas, do hereby  
6 certify that the above-captioned matter came on for  
7 hearing before the TEXAS RACING COMMISSION as  
8 hereinbefore set out.

9 I FURTHER CERTIFY that the proceedings of said  
10 hearing were reported by me, accurately reduced to  
11 typewriting under my supervision and control and, after  
12 being so reduced, were filed with the TEXAS RACING  
13 COMMISSION.

14 GIVEN UNDER MY OFFICIAL HAND OF OFFICE at Austin,  
15 Texas, this 18th day of October, 2013.

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SHERRI SANTMAN FISHER, Texas CSR 2336

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23

1016 La Posada Drive, Suite 294

Austin, Texas 78752

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(512) 465-9100

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