

BEFORE THE TEXAS
RACING COMMISSION
AUSTIN, TEXAS

COMMISSION MEETING

BE IT REMEMBERED THAT the above-titled matter came to hearing on the 11th day of October, 2016, beginning at 10:31 a.m. and adjourning at 12:17 p.m. at 105 West 15th Street, Room 120, held in Austin, Travis County, Texas, and the following proceedings were reported by DELLA M. ROTHERMEL, Certified Shorthand Reporter for the State of Texas, reported by computerized stenotype machine.

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APPEARANCES

Commissioners: ROLANDO PABLOS
 RONALD F. EDERER
 GLORIA HICKS
 GARY P. ABER
 JOHN T. STEEN, III
 VICTORIA NORTH
 ROBERT SCHMIDT
 MARGARET MARTIN
 CYNTHIA LEON

1 P-R-O-C-E-E-D-I-N-G-S

2 CHAIRMAN PABLOS: Okay. Good morning,
3 everyone. Good morning. The time is 10:31. At this
4 time, I would like to call today's meeting of the Texas
5 Racing Commission to order.

6 Mary Welch, would you please call roll?

7 MS. WELCH: Commissioner Gary Aber.

8 COMMISSIONER ABER: Here.

9 MS. WELCH: Commissioner Gloria Hicks.

10 COMMISSIONER HICKS: Here.

11 MS. WELCH: Commissioner Cynthia Leon.

12 COMMISSIONER LEON: Here.

13 MS. WELCH: Commissioner Margaret Martin.

14 COMMISSIONER MARTIN: Here.

15 MS. WELCH: Commissioner Victoria North.

16 COMMISSIONER NORTH: Here.

17 MS. WELCH: Commissioner Robert Schmidt.

18 COMMISSIONER SCHMIDT: Here.

19 MS. WELCH: Commissioner John Steen.

20 COMMISSIONER STEEN: Here.

21 MS. WELCH: Vice-chairman Ron Ederer.

22 VICE-CHAIRMAN EDERER: Present.

23 MS. WELCH: Chairman Rolando Pablos.

24 CHAIRMAN PABLOS: Here.

25 Thank you. Do we have a quorum present?

1 MS. WELCH: Yes, sir.

2 CHAIRMAN PABLOS: Thank you. We'll go to
3 Item II, public comment.

4 Devon, is there anyone signed up for
5 public comment?

6 MS. BIJANSKY: No, sir.

7 CHAIRMAN PABLOS: Okay. At this time I
8 would like to ask Dr. Aber to introduce his very special
9 guests.

10 COMMISSIONER ABER: Now, the New Mexico
11 Racing Commission was kind enough to come down here.
12 And we're trying to get together and all of us work
13 together. And Ray Willis, which is the chairman, and
14 Izzy Trejo, which is the executive director, and
15 Dr. Scot Waterman. They've been working with some real
16 innovative things, and they're going to tell us what
17 they're doing, and we sure appreciate them coming.
18 Thank y'all.

19 CHAIRMAN PABLOS: Thank you. And thank
20 you for being here. Thank you for making the trip. I
21 certainly look forward to not only collaboration, but
22 also coordination and cooperation, I think is very
23 important for neighboring states. You-all have
24 tremendous skill sets. I know we can learn from you.
25 And so thank you, and I look forward to your

1 presentation and for being here.

2 Okay. So at this time, we'll go into Item
3 III, General Business, Reports. I'd like to ask
4 Adrienne to please come up and give us a budget and
5 finance update.

6 MS. COURTNEY: Good morning,
7 Commissioners. On Pages 5 through 10 of your agenda
8 packet is the agency's Fiscal Year 2016 operating budget
9 through August 31st. As of the end of the fiscal year,
10 the agency has collected approximately \$8.5 million or
11 92.8 percent of projected revenue. The agency has
12 expended \$8.05 million and encumbered approximately
13 \$65,000, for a projected total of \$8.1 million or 94
14 percent of our budgeted expenditures.

15 Approximately 7 million of those
16 expenditures are appropriated expenditures.
17 Approximately 1.1 million are unappropriated
18 expenditures.

19 An ending cash balance of \$393,000 is
20 estimated, which will be carried forward to Fiscal Year
21 2017. I'd be happy to answer any questions if you have
22 any.

23 CHAIRMAN PABLOS: Commissioners, any
24 technical or clarifying questions of Adrienne?

25 Hearing none, thank you very much.

1 Appreciate it.

2 MS. COURTNEY: You're welcome.

3 CHAIRMAN PABLOS: Item II, a report on
4 wagering statistics, Curley, please.

5 MR. TRAHAN: Good morning, Mr. Chairman,
6 Commissioners. On Pages 11 through 13 of your meeting
7 materials is the comparison report on wagering
8 statistics for the period of January 1 through
9 September 25 for calendar years 2015 and 2016.

10 For the reporting period total wagering
11 activities at the horse racetracks, it showed a slight
12 decrease in 2016 of 1.19 percent. While at the
13 greyhound tracks there was a more significant decrease
14 of 32.69 percent.

15 Overall total wagers placed in Texas
16 decreased by 4.08 percent while the total wagers placed
17 on Texas races decreased by 12.71 percent.

18 And I'd answer any questions.

19 CHAIRMAN PABLOS: Commissioners, any
20 questions? I have a question.

21 MR. TRAHAN: Yes, sir.

22 CHAIRMAN PABLOS: Or actually I have a
23 couple of questions.

24 MR. TRAHAN: Yes, sir.

25 CHAIRMAN PABLOS: So what are we seeing

1 nationwide with respect to these numbers? We're saying
2 that total handled, 4 percent down for wagers placed in
3 Texas, and 12.7 for Texas races. What are we seeing
4 across the nation?

5 MR. TRAHAN: Well, nationwide total handle
6 is, I believe, down a little bit. A lot these numbers,
7 these decreases here, are attributable to Gulf Greyhound
8 not running any live greyhound races. The significant
9 decrease in greyhounds is almost entirely attributable
10 to Gulf Greyhound not running any live races. Not only
11 does it affect live and export, but it also has a
12 negative effect on simulcast handles because you have
13 fewer customers at the track. It also affects the
14 intrastate simulcast handle at the Texas horse tracks.

15 CHAIRMAN PABLOS: Are we seeing a similar
16 downward trend across the nation, though?

17 MR. TRAHAN: I believe the downward trend
18 is slight across the nation, just not as significant as
19 here.

20 CHAIRMAN PABLOS: I'm also noticing on
21 Lone Star Park an increase.

22 MR. TRAHAN: Right. Lone Star Park, Sam
23 Houston Race Park and Retama Park all have seen an
24 increase in simulcast same species handle, which helps
25 to raise the entire handle across the board.

1 CHAIRMAN PABLOS: Any reason for that? Or
2 what are we attributing that to?

3 MR. TRAHAN: The increases are slight. I
4 don't know if it's something that the racetracks are
5 doing to get more patrons in. That may be something
6 that the racetracks would have to answer.

7 CHAIRMAN PABLOS: Commissioners, any other
8 questions?

9 Okay. Thank you very much. Appreciate
10 it.

11 MR. TRAHAN: Thank you.

12 CHAIRMAN PABLOS: Item III, Inspection and
13 Enforcement Reports, Jim Blodgett, please.

14 MR. BLODGETT: Mr. Chairman,
15 Commissioners, good morning. Commissioners, Gillespie
16 County Fair concluded its 2016 race meet on August the
17 28th. Lone Star Park and Retama Park are currently
18 running their live fall race meets in Gillespie County
19 Fair, Sam Houston Race Park. Gulf Greyhound Park,
20 Valley Greyhound Park and Gulf Coast Racing are
21 currently conducting simulcast operations.

22 Commissioners, during the reporting
23 period, since our last meeting, there have been numerous
24 enforcement activities documented from the Gillespie --
25 completed Gillespie County Fair meet. A breakdown of

1 this activity can be found in your packets on Page 15.

2 Commissioners, during the same period,
3 inspections were conducted at Retama Park, Lone Star
4 Park and Gulf Greyhound Park. From these inspections,
5 we have two outstanding inspection items remaining at
6 Retama Park we've anticipated would be resolved shortly.
7 And I'd be happy to answer any questions that you may
8 have.

9 CHAIRMAN PABLOS: Commissioners, any
10 questions?

11 So Jim, I'm not seeing any drug offenses
12 on here, drug-related.

13 MR. BLODGETT: We had medication listed.
14 Under medication violations, we had ten, Mr. Chairman.

15 CHAIRMAN PABLOS: Last time we had human
16 drug use, right?

17 MR. BLODGETT: Yes, sir.

18 CHAIRMAN PABLOS: Are you including that
19 in there?

20 MR. BLODGETT: Yes, the human drug
21 violations were minimal at this last meet, at the
22 Fredericksburg meet. This is the stewards' rulings from
23 the completed Gillespie County Fair meet.

24 CHAIRMAN PABLOS: Okay. So now you're
25 just bunching them all up in there?

1 MR. BLODGETT: Yes, sir.

2 CHAIRMAN PABLOS: Any reason for not
3 breaking them out like you had it last time?

4 MR. BLODGETT: We thought it made more
5 sense to categorize them from the stewards' rulings that
6 had already been heard.

7 CHAIRMAN PABLOS: Okay.

8 MR. BLODGETT: There are a still a few
9 that are outlined, but they haven't been adjudicated
10 yet.

11 CHAIRMAN PABLOS: Okay. Any other
12 questions, Commissioners?

13 All right. Thank you very much.

14 MR. BLODGETT: Yes, sir.

15 CHAIRMAN PABLOS: Appreciate it.
16 Commissioners, Item B is a new item I've asked Chuck to
17 prepare. I think it's important for us as Commissioners
18 to have a good read and thumb on the pulse of the
19 industry, an industry trend nationwide. And so from now
20 on, we'll have this line item included in all of our
21 briefings, and really it's an effort to try to better
22 understand industry trends and best practices like we're
23 doing today with New Mexico. I think we need to
24 understand what's going out there -- going on out there,
25 making sure that we see, you know, how we can better

1 strengthen the integrity of the sport, right, and the
2 trust of the bettors. And so I'd like to begin to see,
3 you know, what's going on out there with respect to the
4 industry, cheating, potential opportunities for us in
5 enforcement.

6 And, you know, Dr. Aber's been doing a
7 great job with, you know, all of the drug-related
8 issues. And so, you know, Chuck will, from now on, be
9 giving us a briefing on what he sees out there so that
10 we can get a better understanding.

11 And so today, you know, I've asked Chuck
12 to give us a staff presentation on program trainers,
13 which is an issue that's out there, and that we haven't
14 discussed on the record here. So, Chuck, I'd like you
15 to present --

16 MR. TROUT: Actually, Ricky Walker.

17 CHAIRMAN PABLOS: Okay. Perfect. Ricky,
18 will you please come up?

19 MR. WALKER: Good morning.

20 CHAIRMAN PABLOS: This is Item B.1, Staff
21 Presentation on Program Trainers.

22 MR. WALKER: Good morning, Commissioners.
23 My name is Ricky Walker, and I am the chief steward for
24 racing. I have been asked to make a presentation on
25 program or paper trainers.

1 As you know, the program lists the name of
2 each horse entered in a race, the owner, the jockey, the
3 trainer and the horse's prior racing history. Some or
4 all of this information is used by the handicappers.
5 For example, some people like a particular jockey, and
6 they place their wager based on who is riding the horse.
7 Others look to who the horse is trained by.

8 Unfortunately, there are situations where
9 the person listed as the trainer is, in fact, only the
10 program trainer, because, in fact, another person has
11 actually been training and caring for the horse often at
12 a training center back at the farm. That's where the
13 saying "The person's only a program trainer on paper
14 only." This practice usually occurs when the horse is
15 not stabled at the racetrack, but hauls in the day
16 before the day of the race.

17 Why does this happen? Sometimes it is
18 because the owners don't want to pay the daily fees to a
19 real trainer. So they train the horse and then they
20 find someone who is willing to enter the horse as the
21 trainer. And sometimes it may be because the owner's
22 not eligible to get a trainer's license. Maybe he or
23 she failed a test, and sometimes a trainer that has been
24 suspended for a length of time will find someone to be
25 their program trainer.

1 Owners will use a program trainer until
2 there is a problem, and then they will go find someone
3 else that is willing to put their name on the program.

4 With the number of haul-ins between Texas
5 and our bordering states, it is difficult to track the
6 movement of horses and changing of trainers prior to a
7 race meet opening. This is not a problem unique to
8 Texas. The Racing Official Accreditation Program wrote
9 "Has discussed the need for the racing industry to
10 develop regulations that will deal with this issue."

11 But honestly, we can develop the rules and
12 regulations, but the biggest obstacle is going to be
13 obtaining the evidence that proves an individual is
14 program trained for the actual trainer.

15 One thing we might consider is what
16 California is considering. They have proposed a
17 regulatory amendment that would also hold owners equally
18 responsible for the condition of any horse that ships
19 into a licensed track less than one week before it
20 races.

21 Commissioners, we will continue to develop
22 a strategy and the rules and regulations to address this
23 issue and then take it to the Rules Committee for
24 consideration. If you have any questions I will try to
25 answer them for you.

1 CHAIRMAN PABLOS: Commissioners, do y'all
2 have any questions?

3 COMMISSIONER LEON: What is your target
4 date to bring that to the Commission?

5 MR. WALKER: We have proposed a rule at
6 our last Rules Committee meeting and it's being reviewed
7 and everything, to see hopefully if we can bring that
8 forward in the next Rules Committee meeting.

9 MS. LEON: And when is that going to
10 happen? Do you have a date for that or --

11 MR. WALKER: Do we have any idea?

12 MR. FENNER: We typically have the Rules
13 Committee meeting two weeks in advance. So I don't know
14 that the date has been established.

15 MS. LEON: Okay. But it should be within
16 the next couple of months.

17 MR. FENNER: Depending on when the next
18 meeting is.

19 MS. LEON: Okay. Great.

20 VICE-CHAIRMAN EDERER: We discussed it at
21 the last rules meeting, and they're fine-tuning it. So
22 we're well aware of what the -- what the situation is.
23 We're waiting for the final outcome of their
24 discussions.

25 MR. TROUT: To answer your question, my

1 goal is to have it at the next Commission meeting.

2 MS. LEON: Okay.

3 CHAIRMAN PABLOS: Any other questions? So
4 as you can see, this is one of those issues that we
5 really haven't had an open discussion about. I'm glad
6 at the Rules Committee you've looked at it, and I
7 certainly agree that we ought to address this through
8 rule-making, but I look forward to other meetings where,
9 you know, we can just have other discussions about
10 similar situations. You know, and again, it goes back
11 to ensuring the integrity of the sport and the trust
12 that we're supposed to uphold particularly for the
13 guidelines.

14 So I thank you very much for this.

15 Any other questions, Commissioners? Okay.
16 Thank you very much.

17 MR. WALKER: Thank you.

18 CHAIRMAN PABLOS: Appreciate it.

19 Item B.2, presentation by representative
20 New Mexico Racing Commission regarding
21 Out-of-Competition testing. I'd like to at this time
22 recognize Chairman Willis and Executive Director Trejo
23 for the New Mexico Racing Commission. Could you please
24 come up?

25 CHAIRMAN WILLIS: Good morning, Chairman.

1 CHAIRMAN PABLOS: Good morning.

2 CHAIRMAN WILLIS: It's very nice to be
3 back in Texas for a little while. I wish that I could
4 be here and tell you that everything is a level playing
5 field throughout the industry, but it's not. The
6 program training is a big problem. What we have done in
7 New Mexico leads into the program training also, but our
8 main problem we had was these horses were going from one
9 trainer to another to another. Get a trainer with a bad
10 test. He sat down for 15 days. A new trainer comes in
11 that we've never heard of, but he can pass a trainer's
12 license or maybe he's got a Texas license. So we
13 reciprocate and give him a trainer's license, on and on
14 and on.

15 We have had many problems with it. Our
16 judicial system moves very slowly in New Mexico, as well
17 as probably here, and some of those cases will carry on
18 for months, months, even into the years. We have some
19 of them out there five years that's still being handled
20 through the judicial system and we can't do anything
21 about it, but what we have done with the program
22 trainers, the horses, now we're doing Out-of-Competition
23 testing on them. And we have a rule that I have left
24 with your executive director that gives us the authority
25 to check a horse at any time, any place, for any reason

1 or for no reason, and that's what we have proceeded to
2 do and we have set it up where if the horse is caught
3 with a drug in its system, that's a Class 1 or 2. It is
4 a penalty. It gets a 60-day vacation. It also covers
5 other drugs that Dr. Waterman can tell you. I don't
6 know the name -- I don't know how to pronounce the
7 drugs, let alone use it, but some of those other drugs
8 goes into that system also.

9 We have also last July enacted a penalty
10 and stopped the -- made our rule where we've no longer
11 allowed the use of Clenbuterol with any horse that's in
12 our system. We've got jurisdiction over it. That's an
13 illegal drug.

14 Now, we did make it where you could use it
15 if the horse is in need of Clenbuterol, which is a
16 fantastic therapeutic medication for breathing, but that
17 horse goes on the fence list for 30 days. If he needs
18 it, get it, but if it doesn't need it, we want it left
19 out of their system. So with that, I'll let
20 Dr. Waterman explain to you what his thinking was, what
21 he did with it. He's very well-versed in it. He helped
22 write the rule.

23 CHAIRMAN PABLOS: And, Dr. Waterman,
24 forgive me for not having asked you to come up. I
25 apologize.

1 DR. WATERMAN: Oh, no problem. I'm
2 perfectly happy sitting back there.

3 First of all, thank you for the invitation
4 to be here today. Those of you that have some idea of
5 my background, I was the executive director for the
6 Racing Medication and Testing Consortium from pretty
7 much the inception of that organization for the first
8 ten years of its life. So there's really nobody in this
9 industry that is more for uniformity, state to state,
10 than I am. And so that gives you some idea of the
11 situation that I walked into about six or seven months
12 ago.

13 For me to recommend that a particular
14 state break from everyone else in the nation, basically,
15 to deal with a situation, it has to be pretty bad for me
16 to push for that.

17 Director Trejo and I are sort of new
18 shooters. We're not New Mexico people. You are a
19 little bit, but we've not been in the industry in New
20 Mexico.

21 So it was sort of an eye-opening
22 experience for me to come into a state and see -- and
23 I've got to read it, because I still usually don't even
24 believe it -- in Calendar Year 2014, there were 71
25 positive tests for Clenbuterol in New Mexico. In 2015,

1 despite the ban going into place or the prohibition, the
2 zero tolerance level for Clenbuterol going into place in
3 the middle of 2015, there were actually 84 positive
4 tests. So the number grew despite the fact that we had
5 put a ban in place on the presence of the drug, and I
6 can tell you certainly through the first part of 2016,
7 the trend was going to be the same. We were going to
8 see the same number, if not more. Just to put it into
9 some sort of perspective, my job prior to coming into
10 New Mexico was with Arizona, and granted, we don't have
11 the same number of race dates in Arizona, we had maybe
12 20 positives total for a year. New Mexico had 74 for
13 Clenbuterol.

14 Now, in addition to Clenbuterol, there
15 were obviously other positive tests as well. There were
16 15 positives for anabolic steroids over the course of
17 those two years, and there were 18 positives for
18 patently Class A substances over that year, and I'll
19 tell you that the majority of the Class A substances
20 that we saw were Ractopamine and Zilpaterol. Both of
21 them are beta-agonist drugs. So they're in the same
22 family as Clenbuterol, but Ractopamine and Zilpaterol
23 have much stronger anabolic or muscle-building effects
24 than Clenbuterol. They're actually each used in
25 husbandry, animal husbandry. Ractopamine is used to

1 finish off pigs before slaughter. Zilpaterol is used to
2 put muscle mass onto cattle. So we saw these types of
3 substances bleeding into New Mexico as well.

4 The other thing I noticed -- and it's a
5 perfect segue from your previous report. I was hired
6 right in the middle of the herpes outbreak at Sunland
7 Park. And so I was going back and forth between Arizona
8 and Sunland Park every week. Stewards at that time,
9 because there was no live racing, were trying to catch
10 up to a backlog of positive tests. As you can imagine,
11 when you've had 84 positives for Clenbuterol, they tend
12 to stack up a little bit over time.

13 What I noticed was trainers coming in for
14 their hearings that had no idea what the horse's name
15 was, had no idea who the owner of the horse was. It was
16 very clear to me that we've entered this period of time
17 where the trainer is a disposable commodity. That
18 trainer is not training that horse. It's somebody else.
19 Hence, the program trainer, moniker. It was clear to me
20 that we were not going to suspend our way out of this
21 problem. Yeah, we can give the guy suspension, but that
22 horse is just going to go to somebody else the next day,
23 and probably that trainer will get a positive and that
24 suspension will happen by the time that suspension is in
25 place. The first trainer that had the positive test is

1 probably off his suspension by then. So we just play
2 merry-go-round with trainers.

3 So at about that same time, Chairman
4 Willis, based on some of the work that was being done in
5 California on this, suggested that we look at their
6 rule. Their rule was to place horses on the
7 veterinarian's list that tested positive for
8 Clenbuterol. It wasn't a set period of time. It was
9 basically until their investigation was concluded as to
10 the source of the drug in the horse.

11 So pun intended, what we decided to do was
12 try to take what they have done and put it on steroids
13 and set a date certain where that horse is essentially
14 out of the racing population.

15 We used -- instead of the veterinarian's
16 list, our rationale was we wanted to protect the betting
17 public by eliminating this horse from the racing
18 population when it was potentially under the influence
19 of a long-acting drug. So we used the steward's list
20 instead of the veterinarian's list.

21 So a horse that tests positive for
22 Clenbuterol, or any of the other muscle-building,
23 beta-agonist drugs, so Ractopamine, Zilpaterol, any drug
24 that is a Class A penalty drug -- so the worst of the
25 worst of the drugs, in terms of having the highest

1 potential to influence performance and the lowest
2 therapeutic potential, those -- and any anabolic steroid
3 as well, those horses that test positive go onto the
4 steward's list the day after we receive the laboratory
5 report. That's an immediate action that's taken.

6 Now, the use of the steward's list in our
7 view is not a penalty. The steward's list is a tool
8 that's used for a variety of things. Horses that don't
9 perform well that get beaten by 50 lengths in a race
10 will typically go onto the steward's list. Horses that
11 bear out on a turn or halt a turn will typically go on
12 the steward's list. These lists are used to protect the
13 betting public. They're used to protect the
14 participants in the race, and that's why we thought that
15 this was the route to pursue.

16 I guess I'll read again, because I don't
17 think I can say it any better than I wrote it, but this
18 was in the justification to adopt this as an emergency
19 rule. "Those that wager on horse racing must be
20 confident that the form of the horse is based on its
21 true athletic ability and not based on the use of a
22 performance-enhancing substance. It is the mandate of
23 the Commission to provide this level playing field, not
24 only for the wagering public, but also for those
25 participants in the sport in New Mexico that abide by

1 the rules.

2 The placement of the horse on the
3 steward's list will remove the horse from the racing
4 population for the period of time necessary to ensure
5 the effect of the drug is no longer present by the time
6 the horse is allowed to race again, thereby protecting
7 the betting public and the other participants in the
8 race."

9 And that's the other sort of mechanical
10 piece of the rule. If you test positive for
11 Clenbuterol, after your 60 days is up, you have to test
12 clean before you can be removed from the list. So we
13 can ensure that during that 60 days off, they aren't
14 just pounding it with something else or more Clenbuterol
15 to maintain that muscle level while they're out of
16 action.

17 In terms of how it's working so far, I'll
18 turn it over to Director Trejo.

19 MR. TREJO: Thank you, Scot.

20 Mr. Chairman, Commissioners, once again, thank you for
21 having us here today. We'd love to take this
22 opportunity to express to you what we proudly have done
23 in New Mexico recently. I come to you by way of
24 multiple racing jurisdictions, including Delaware, West
25 Virginia, Virginia, Arizona and Pennsylvania. Most

1 recently and most proudly, I come to you by way of the
2 New Mexico Racing Commission, and I say proudly, because
3 what we've done in the last six months of their -- with
4 the help of Chairman Willis and Dr. Scot Waterman, I
5 think has been astonishing.

6 Prior, as a regulator, I would have never
7 thought to have implemented rules which we have
8 implemented recently in New Mexico. It's a monumental
9 rule, our Out-of-Competition testing Program. I believe
10 New Mexico alone provides one-fifth of the national
11 Out-of-Competition testing performed in this country.

12 As far as the new rule that we
13 implemented, that Chairman Willis and Dr. Waterman
14 mentioned, I think that's a monumental rule as well.
15 It's a little early to say that we can see the effects
16 of it at this point in time, but we're hoping that it's
17 certainly going to be used as a tool to slow what
18 problem we have down. And that problem is in the most
19 recent 2015 RCI survey that was recently conducted, New
20 Mexico ranks top five pretty much in every category
21 Class 1 positives, Class 2 positives, Class 3s, 4s, and
22 5s. Overall we're probably number one in number of drug
23 positives, which leads to doing what we had to do, and
24 that's get tough, get strong. And it's a matter of
25 salvaging what's left of this industry. As many will

1 say and what we hear throughout the country, and I've
2 heard it in many meetings throughout the country, racing
3 is a dying industry.

4 Well, with my background, my father being
5 a trainer for 45 years, living off what horses have
6 earned, to feed me, house me, educate me, I see this
7 industry as dying. So I will do whatever it takes to
8 help keep it alive.

9 And by implementing these rules, along
10 with other tools, I think we can continue to salvage
11 what we have left of this industry and make it stronger.
12 Some may say that's fallacy, but I'm a believer, because
13 the people that I've met throughout this industry are
14 good, hard-working, honest people. They're still out
15 there in this industry. So certainly doing it for the
16 mom-and-pop stables, and more importantly, the horse,
17 whoever speaks up for the horse in this industry.

18 So I believe as the Executive Director of
19 the New Mexico Racing Commission, it's our duty -- part
20 of our duty is to have a voice for that horse that's out
21 there competing for us and creating a livelihood for
22 several thousand people that do a lot of hard work in
23 this industry.

24 To this point in time, as I mentioned
25 earlier, it's probably a little too early to see the

1 major effects one way or the other that our rules have
2 created, but I still believe they're good rules that
3 will affect racing in New Mexico and continue to build
4 integrity and confidence into our wagering product, and
5 that's the backbone of this industry, is the gambler
6 betting on our races in New Mexico.

7 I'm not proud to say that our tracks are
8 in the lower tier of the national organization for
9 handicappers. What's it? Handicappers Association of
10 North America. I'm sorry, HANA. And I spoke with some
11 of their members, and I said, "How come your gamblers or
12 your members don't wager on our races in New Mexico?"
13 And they said, "Well, because they don't trust your
14 product. They see that there's a lot of cheating going
15 on over there, and it's unfortunate because a majority
16 of the drug positives we have stem from the quarter
17 horse industry, but the reality is, the entire industry,
18 whether it be Thoroughbred or quarter horses, they're
19 painted with the same brush. So all they say is New
20 Mexico racing is corrupt and crooked.

21 So I think if we continue to work and try
22 to gain more confidence from gamblers throughout the
23 country, we can help sustain this industry that we so
24 dear love. And I'm open for any questions.

25 CHAIRMAN PABLOS: Well, thank you. And

1 thank you for coming out here and enlightening us. This
2 is certainly something that I know that we can use the
3 information you've provided.

4 Commissioners, are there any questions or
5 comments?

6 Commissioner Ederer, go ahead.

7 VICE-CHAIRMAN EDERER: As you mentioned
8 and you alluded to, as far as the courts are concerned,
9 they're very slow at doing anything. Traditionally,
10 courts do everything in their power to allow the
11 administrators to do their job. The courts will, like I
12 said, traditionally look to the industry. They will
13 look to us, the people that know more about racing, that
14 know more about the horses, that know more about the
15 drugs, and as a result of that, they'll keep pushing the
16 cases off and pushing the cases off. So they're very,
17 very -- they're very deliberate in what they do, and if
18 you talk to the judges they don't want anything to do
19 with racing, because they don't understand it.

20 And so like you have done, which is
21 terrific, and we certainly are looking into it right
22 now. We just took it up at our last Rules Committee
23 meeting. We have to give them the rules. They look to
24 us for guidance, and I think if we can come up with good
25 strong rules, keep the courts out of it, if we can. You

1 know, we can police our own.

2 And as you-all are doing, and you're doing
3 a terrific job. And it's great to have you come in and
4 tell us what you're doing. And with Dr. Aber's
5 guidance, we were looking at the Clenbuterol -- there
6 you go -- the Clenbuterol problem, and we are -- our
7 recommendation was that a committee be formed, headed by
8 Dr. Aber to look into this and come up with a rule for
9 us at our next Rules Committee meeting, as we did with
10 the stewards, as far as the Out-of-Competition testing
11 is concerned, and the -- not only the out of
12 competition, but the program trainers, what to do with
13 the program trainers. I think that we have to come up
14 with it. We can't rely on the courts to root for much
15 help. And the Legislature also looks to us for
16 guidance. And your leadership here is terrific, and we
17 really appreciate you coming in.

18 We are behind you, but as a result of what
19 you're doing and our -- Dr. Aber is coming forward and
20 bringing it to our attention, we're going to catch up
21 with you, we hope, as soon as possible.

22 COMMISSIONER WILLIS: Well, we hope do
23 you, sir. It's been a long battle. And I'll tell you,
24 before we implemented any of these rules, we had our
25 medication and Rules Committee meetings which involves

1 people from all part of the industry, and we had 100
2 percent support throughout -- from the horsemen, the
3 breeders, from -- everybody around was 100 percent for
4 it, and like this Clenbuterol that was being abused so
5 bad, that I've got reports where horses -- that RCI says
6 that you shouldn't have over 140 picograms on a race
7 day. I've got reports right here that was being
8 investigated at that time of horses with 10,000, 15,000,
9 20,000, one 56,000 picograms of Clenbuterol in the
10 urine. That is completely unacceptable, and we felt
11 that in New Mexico, that we had to do something to
12 prevent it, to get rid of it. It's a good therapeutic
13 drug, but every veterinarian that I questioned, and it
14 was many of them.

15 My first question was, "Do you think that
16 Clenbuterol is a good therapeutic drug?" "Yes, sir.
17 It's a very good therapeutic drug." I said, "What about
18 performance enhancement?" "Well, yeah, it's a
19 performance enhancer, because it builds them up. It
20 does this, does that." I said, okay. We do not want a
21 horse racing in New Mexico that has a performance
22 enhancer in its system, period. And if you want to use
23 it, go on a vet's list and come off 30 days later and
24 everything's fine.

25 So these are things that we have faced,

1 the program trainers. I mean, we have one trainer out
2 there right now with 11 bad tests that he's just got
3 everybody else's horses, and none of them he was really
4 training.

5 And those are things -- we don't need
6 those people. They need to go make a living somewhere
7 else, and the public needs to be educated, the judicial
8 system needs to be educated where that judge does know
9 what the rule is, what is out there, what's taking
10 place, what we're fighting, and hopefully we'll make
11 some progress.

12 And the main thing that I would leave with
13 you is we've been there before. Let's leave that
14 behind, improve on it and go forward.

15 You got anything else?

16 CHAIRMAN PABLOS: Any questions?

17 Dr. Schmidt.

18 COMMISSIONER SCHMIDT: Just a couple of
19 quick comments. Just one clarification, though, when
20 you were -- just for our Commission, because I know you
21 deal with these drugs every day, but when you were
22 talking with vets and they said it was a therapeutic
23 drug, it's a great therapeutic for asthma.

24 COMMISSIONER WILLIS: It's a great drug.

25 COMMISSIONER SCHMIDT: Right. But what

1 the folks are using it for, and supposedly the horses
2 got the drugs because the Belmont stables were real
3 dusty.

4 COMMISSIONER WILLIS: Yeah.

5 COMMISSIONER SCHMIDT: But what they're
6 using it for is the steroid side effect, so it has
7 nothing to do with asthma.

8 COMMISSIONER WILLIS: When we're getting
9 away with that broad of steroids, Clenbuterol came to
10 the table.

11 COMMISSIONER SCHMIDT: Right.

12 DR. WATERMAN: There are studies that show
13 that upwards to 80 percent of horses that are stabled on
14 a racetrack grounds in the United States have some
15 degree of inflammatory airway disease. That's the
16 reason Clenbuterol became popular in the first place,
17 but at higher doses than what's recommended for the
18 therapeutic use for COPD or inflammatory airway disease,
19 it does an anabolic effect, and that's where we're
20 seeing -- and you know, the concentrations of drugs that
21 we're seeing in the post-race samples tell you that, to
22 get the concentrations that Chairman Willis talked
23 about, these are high, high doses. These are not
24 therapeutic doses. These are muscle-building doses.

25 COMMISSIONER WILLIS: And the other thing

1 I think that your investigators, your stewards will tell
2 you, if they walk on the back side, most of the
3 tracks -- most -- in Texas, New Mexico, Louisiana, in
4 years past, 90 percent of the horses on there got a dose
5 of Clenbuterol every day until five days before the
6 race.

7 COMMISSIONER NORTH: Wow.

8 COMMISSIONER WILLIS: That's it.

9 COMMISSIONER SCHMIDT: One other question,
10 if you could -- and again, I'd like to thank Dr. Aber
11 and I'd like to thank you folks for coming and educating
12 us. I really appreciate you coming over here. Help me
13 with one problem, though. And I couldn't support you
14 more. But I was just curious, I went to Lone Star on
15 Kentucky Derby day, which is probably one of our biggest
16 dates, magnificent track. The first race had a field of
17 quarter horses on a dirt track and a dry day. So I was
18 curious, once you implemented this rule, did you see
19 that a lot of out-of-state traffic had decreased in New
20 Mexico, or do you not normally get that much? We get a
21 lot of shippers, and I'm just concerned that we're going
22 to get a lot of pushback from the out-of-state shippers.

23 COMMISSIONER WILLIS: It hasn't decreased.
24 Now, some of them that we have gotten in there, and I'm
25 sure was just brought in that we've caught with the high

1 concentrations in it, but we don't want them.

2 DR. SCHMIDT: Right. We don't want them.

3 COMMISSIONER WILLIS: And if they want to
4 race clean, we really welcome them. You know, we have a
5 problem filling fields quite often, and some of that,
6 I'll tell you, we scratched five horses' out-of-state's
7 races because they tested positive for illegal drugs a
8 week before the race, and it wasn't all Clenbuterol. I
9 mean, it is methamphetamines. It's unreal. We're not
10 dealing with 100 percent good honest people on the back
11 side. Most of them are, but some of them are not. We
12 didn't have near as many problems when the purses was
13 less. When our purses got bigger, they're running for
14 more money. You have more problems. Sad to say.

15 CHAIRMAN PABLOS: Dr. Aber.

16 COMMISSIONER ABER: Yeah. Could you
17 discuss a little bit, especially Dr. Waterman, testing,
18 hair testing and then why California was doing that and
19 now they're not or --

20 COMMISSIONER WILLIS: Well, we have
21 legalized hair testing. We have put that into our
22 system now that we can do hair testing, and that was one
23 of the problems that California had when the track was
24 requiring it and the track went that way with it, but it
25 wasn't a Commission rule.

1 DR. WATERMAN: It was a House rule that
2 was put in place by Los Alamitos, and I can't remember
3 what level of court it was, but essentially what they
4 were told was that Los Al could not be a drug testing
5 facility when you already have the CHRB as your
6 regulator and drug tester. So they had the House rule
7 turned over, but I can also tell you that the CHRB is
8 going through the rule-making process right now in terms
9 of allowing the CHRB to do drug testing -- or hair
10 testing as well. So we've looked into it. We feel like
11 it's more of an informational tool than it is a true
12 regulatory component.

13 The problem with hair testing is that you
14 can't pinpoint time of administration. You get a
15 window, and from our discussions with the U.C. Davis
16 Laboratory, what they're providing is a six-month
17 window. So has this drug been administered within this
18 six-month window? Well, if you look at how we prosecute
19 drug cases in racing, we have two sort of linchpins that
20 we use to prosecute cases. One is the absolute insurer
21 rule. The trainer is the absolute insurer for that
22 horse and is responsible for that horse. And number two
23 is the prima facie language that essentially says if we
24 have a positive test that is prima facie evidence that
25 the horse carried the drug in its system during the

1 running of the race. Those are our two linchpins in
2 terms of how we prosecute cases.

3 Well, hair testing doesn't fit either one
4 of those. So pursuing hair as a violation that results
5 in some sort of sanction is extremely difficult, the way
6 racing is set up now. You know, could that change in
7 the future? Absolutely, and I think it might, but right
8 now it's difficult. So our intention is to use it for
9 intelligence and information at this point.

10 California is going down the path of,
11 again, using a steward's list or a vet's list. If the
12 horse that has a positive in the hair for Clenbuterol in
13 that six-month window, the horse goes on the steward's
14 or the vet's list, and maybe that's an avenue we'll take
15 at some point, but I think we're all just starting to
16 get our arms around hair testing. It's new. It's
17 different. It presents different challenges than
18 standard post-race drug testing which we've relied on
19 for years and years and years. This is different. So I
20 think we're all kind of taking our time with it, but
21 could it be a useful tool? Absolutely.

22 COMMISSIONER ABER: You know, I'd like to
23 point out, too, how important it is for Louisiana, New
24 Mexico, Oklahoma and Texas, especially, to get together,
25 because in Louisiana, you know what they say, 14 days,

1 and you know, you run a test. So they're afraid to come
2 over here, if they've been using it, they're going to
3 scratch. And I think it's more -- I think it's probably
4 90 to 100 percent are using it, and I think they're just
5 trying to figure out how to take it off, you know, how
6 many days they're going to take it off. So we -- you
7 know, we're dependent on New Mexico. Our horses are
8 raised in Texas, thousands of them, and we're getting
9 money for the State of Texas to raise these horses to
10 send them out there, and y'all are sending horses back
11 to us. Louisiana is the same way. So if we'll get all
12 uniformed, we're going to -- and together, we're going
13 to all be better. And everybody wants a true way to run
14 your horse without having to do any of that.

15 VICE-CHAIRMAN EDERER: Anything from the
16 RCI?

17 COMMISSIONER WILLIS: We haven't gotten
18 anything. In fact, our Legislature sets us up to where,
19 in effect, we follow the RCI rules and regulations, but
20 we are authorized to go more severe than what RCI is.

21 VICE-CHAIRMAN EDERER: But there's really
22 nothing coming out of them at this point, though. How
23 about the jockey folks?

24 DR. WATERMAN: I go back to what I said
25 earlier, too, though. I mean, New Mexico had sort of

1 extraordinary circumstances. This is not necessarily a
2 rule that I think needs to be uniform nationally in the
3 model rules. I think it's -- I think it's very harsh.
4 It's very strict, but it's used to deal with specific
5 circumstances.

6 States that don't have these issues
7 probably don't need this rule, and don't need to go --
8 I'm -- this is a bear of a rule to write, because the
9 steward's list touches so many other sections in your
10 rule book. Director Trejo and I spent about two weeks
11 just pitching sections at each other that we needed to
12 change to make sure we didn't have one section that
13 conflicts with another. So it's a complex rule that I
14 don't think necessarily fits as a model rule.

15 VICE-CHAIRMAN EDERER: I see.

16 DR. WATERMAN: But I certainly think it
17 fits regionally as a model rule.

18 CHAIRMAN PABLOS: Well, Commissioners --
19 oh, I'm sorry.

20 VICE-CHAIRMAN EDERER: I was just going to
21 say, we're at the beginning stages of doing it. You're
22 way ahead of us. So I'm sure we'll be making it
23 there --

24 DR. WATERMAN: Well, I don't want to speak
25 for Director Trejo, but certainly having gone through

1 the process, but then again, because I believe strongly
2 and certainly regional uniformity when it comes to
3 something like this, I will be happy to help in any way
4 that I can.

5 VICE-CHAIRMAN EDERER: And for general
6 population here, we've had absolutely no pushback
7 whatsoever. Everyone, trainers, tracks, everyone,
8 jockeys, is all behind us.

9 COMMISSIONER WILLIS: Great.

10 CHAIRMAN PABLOS: Commissioners, if I may,
11 and Chairman Willis, if I may, I'd like to recommend
12 that we ask Chuck and Director Trejo to begin to work
13 more closely together, open lines of communication and
14 perhaps have regular gatherings, if including the other
15 bordering states seems to be a good idea, and perhaps
16 forming a coalition, I don't know, but, you know,
17 there's been -- we had opportunities where New Mexico
18 and Texas have had to work and collaborate. The herpes
19 issue is one. The TxDOT transportation issue with
20 Sunland Park during their main race where there was
21 construction going on, on the Texas side, that was going
22 to impede traffic. We had excellent collaboration with
23 the governor's office. And so there is, you know,
24 evidence that perhaps we should, you know, take a step
25 forward. Especially on the vet side to look for

1 opportunities to collaborate, to coordinate and
2 certainly to cooperate. And so I'd like to ask if -- if
3 it's okay with you-all, I'd like to ask Chuck to take
4 that step with Director Trejo and then perhaps have
5 reciprocity, have -- you know, we'd love to come up to
6 your meetings and share some of the things that we're
7 doing that perhaps you can also learn from us, and so I
8 think this best practices exercise might be helpful, but
9 it's all with your consent, Chairman, you know and with
10 this Commission's approval?

11 COMMISSIONER WILLIS: As with the back
12 side and all the vets, you still need lines of
13 communication with these departments that's governing
14 also. I think that our executive director here would be
15 most happy to speak with your people any time. I know
16 he does have a dialogue with many other jurisdictions.
17 I think it's more important with the ones in our area
18 that he has good dialogue with.

19 CHAIRMAN PABLOS: Great.

20 COMMISSIONER WILLIS: And he's going to be
21 open to your people any time. I will be open to speak
22 with you any time you'd like. I'm not that good of a
23 speaker, but I'm still here.

24 CHAIRMAN PABLOS: Well, thank you,
25 gentlemen. Thank you for making the trip. And,

1 Dr. Aber, I'd like to echo Dr. Schmidt's sentiments.
2 Thank you for making this happen. I think this was a
3 very productive, very important meeting. So safe
4 travels, gentlemen. I hope you enjoy Austin the rest of
5 the day. Okay.

6 MR. TREJO: Thank you.

7 CHAIRMAN PABLOS: Okay. We'll move on to
8 Item C, Discussion, consideration and possible action on
9 Potential Appointment of a Committee on
10 Out-of-Competition testing. I'd like to recognize Mark
11 Fenner. I know we have someone signed up to speak. So,
12 Mark, would you please lay this out?

13 MR. FENNER: Yes, sir, as the
14 vice-chairman described, this issue of
15 Out-of-Competition testing was discussed at the Rules
16 Committee meeting. There was a lot of questions about
17 it. It's a big issue, as you can tell. The industry
18 had questions about logistics, about, you know, what
19 kind of hardships it might impose on trainers and owners
20 to get their horses to the location where they could be
21 tested, who would bear the cost, you know, the obvious
22 lack of a national standard. So the committee at the
23 end -- the consensus was that this was an issue that
24 could be studied best by a separate committee and wanted
25 to recommend to you that you designate a committee to

1 study Out-of-Competition testing and that Commissioner
2 Aber be designated as chair.

3 CHAIRMAN PABLOS: Doctor, are we
4 volunteering you or --

5 COMMISSIONER ABER: No. That's good.

6 CHAIRMAN PABLOS: Well, great. And how
7 many members, Mark, three? Is that our normal --

8 MR. FENNER: Yes, I would not recommend
9 more than three, but we only have the one volunteer at
10 the time, so --

11 CHAIRMAN PABLOS: Okay. So let's do this
12 so as not to put you on the spot. If you would like to
13 be a part of the Rules Committee, please touch base with
14 either Mark or Dr. Aber. I think it's extremely
15 important that we do this, and again, I thank you for
16 taking the lead on this. So we'll leave it at that. If
17 you fail to come up with volunteers, please let me know.

18 MR. FENNER: Yes, sir.

19 CHAIRMAN PABLOS: And I will certainly
20 populate that very quickly.

21 MR. FENNER: Thank you, sir.

22 CHAIRMAN PABLOS: We have a speaker. We
23 have Mindy McArthur. Will you please come up?

24 MS. McARTHUR: Hi. Thank you guys for
25 letting me have a minute to say something on the

1 medication. I've witnessed -- I run horses in New
2 Mexico, and I live here in Texas as well, but I
3 witnessed the Out-of-Competition testing this summer,
4 and it absolutely worked on our big futurities in stakes
5 races, because we did have an instance where three of
6 the horses were not allowed to run back in the finals.
7 And I think that a lot of owners these days were
8 spending a lot of money on trial payments, thousands of
9 dollars, just to run in the trials, and when we're not
10 all having a fair shot, we're not getting the tests back
11 before the finals, it's really created a hardship on a
12 lot of us, and we're seeing a lot of people, really good
13 horsemen and really good, big owners getting out of the
14 business. And I think that it's something that we could
15 all actually, you know, prepare for, for the future.

16 And one of the other things that I wanted
17 to say is the -- the 365-day clock that the trainers
18 get, it really gives them a clean slate whenever they're
19 done with their time. They're coming back in, and a lot
20 of these same issues they're continuing when they get
21 another positive test. Those horses go back into a
22 paper trainer's name. Doing away with the 365-day clock
23 would really make it hard on these days to come back in
24 and continue the cycle of abuse that they're doing.

25 If Commissions were to implement a

1 medication violation system similar to what the AQHA has
2 started. On a jurisdictional level, it would really
3 help the growth of racing and really put an end to these
4 guys coming back in and doing it all over again.

5 And I had spoken to Mr. Trejo about this a
6 few weeks ago, because I think that the clock -- the 365
7 day clock is one of the biggest problems that we have in
8 racing right now and why we're seeing the same
9 systematic abuse over and over. So that's really all I
10 wanted to say today, and I appreciate you for letting me
11 take a minute to say it.

12 CHAIRMAN PABLOS: It's our pleasure.
13 Commissioners, any questions?

14 Dr. Aber?

15 COMMISSIONER ABER: Could you explain this
16 365-day clock?

17 MS. McARTHUR: So as you know, trainers --
18 basically, all of the tests are compounded within 365
19 days. So on the rulings, you'll see, okay, first
20 violation in 365 days or second violation. In some
21 cases there's eight violations that are counted as one
22 violation because they were within a certain time
23 period. When you take the 365-day clock out of the
24 equation and you compound those medication violations so
25 that they're carried forward on a point-based system,

1 then when a trainer gets a certain level of points at,
2 say, three years or two years, then the penalties are
3 much, much harsher than if it came back in and it was
4 the first medication violation and another 365-day time
5 period.

6 CHAIRMAN PABLOS: Any other questions?

7 Well, Ms. McArthur, I certainly would hope
8 that once we get this committee up and running that you
9 participate, you know, in helping us see some of these
10 things that sometimes we need some clarification on.

11 MS. McARTHUR: Thank you.

12 CHAIRMAN PABLOS: I appreciate you being
13 here today.

14 MS. McARTHUR: Yes, sir.

15 CHAIRMAN PABLOS: Dr. Aber?

16 COMMISSIONER ABER: Let me ask you one
17 thing. We are testing, right, Ricky? We are testing
18 and getting our tests back within seven days. That's
19 what's written in there.

20 MR. WALKER: It kind of depends on the --

21 CHAIRMAN PABLOS: Come on up, Ricky,
22 please.

23 MR. WALKER: Yes, this is Ricky Walker.
24 Yeah, it kind of depends. Some of them are and some of
25 them aren't. We do have TVMDL here and maybe they can

1 address that.

2 CHAIRMAN PABLOS: Doctor, would you like
3 to hear from TVMDL?

4 COMMISSIONER ABER: I would, because we
5 had discussed that previously, and this is Mr. Mays?

6 MR. MAYS: Good morning, Commissioners.
7 My name is Travis Mays. I oversee the drug testing lab
8 at TVMDL.

9 COMMISSIONER ABER: Okay. Could you
10 address that, especially on futurities and quarter horse
11 races. We had talked about this last year and the year
12 before, that y'all could get that test back way before
13 two weeks before the final.

14 MR. MAYS: Right now, as far as that goes,
15 it's quarter horse trials that we are turning those
16 results out within five days.

17 COMMISSIONER ABER: Okay. Wow.

18 MR. MAYS: Yes, sir.

19 COMMISSIONER ABER: Well, that's good. I
20 mean --

21 MS. McARTHUR: That's very good.
22 Mr. Blanchard at Albuquerque Downs was the first track
23 owner I had seen implement getting the test results
24 expedited back, and if there was any level at all, he
25 was still allowing for the time to send the split off

1 and he created an also eligible list for those graded
2 races. So there could be scratched horses that got to
3 enter and run, and I think that that's really prevalent
4 for owners right now, because it's really expensive to
5 run -- for us to run in those races, and then when you
6 have positives that come out after the finals are run,
7 it really leaves a bad taste in your mouth, because
8 maybe your horse could have been there running for a
9 million dollars or \$500,000 or whatever the case may be
10 for the race.

11 COMMISSIONER ABER: So Mr. Mays, if we get
12 them back in five days, we should have the time to do a
13 split simple, send it off, right?

14 MR. MAYS: Correct.

15 COMMISSIONER ABER: All right.

16 MS. McARTHUR: That would be great.

17 COMMISSIONER ABER: Okay. Thank you.

18 CHAIRMAN PABLOS: Great. Commissioners,
19 any other questions?

20 MS. McARTHUR: Okay. Thank you.

21 CHAIRMAN PABLOS: Thank you very much.

22 We will now be taking the Item D up today.
23 There was an error in the posting. So we'll bring that
24 up next time. Item E, approval of the MOU with TVMDL.

25 Mark, I'd like to ask you to please lay

1 this out.

2 MR. FENNER: Yes, sir. Every year the
3 Commissioner approves a memorandum of understanding with
4 the Texas Veterinary Medical Diagnostic Laboratory,
5 which performs the drug testing on animal samples. The
6 charges for the testing are paid by the racetracks and
7 the commission reviews the charges and makes sure that
8 they are appropriate. The proposed MOU that's in your
9 materials makes two substantial changes, or not even
10 very substantial. First is an increase in the equine
11 drug testing cost from \$210 to \$215 per tested horse,
12 and this accounts for changes TVMDL made to track
13 samples and test them for DMSO, which is a different
14 extraction process that are used for all other drugs.

15 The MOU also has the capability to test
16 equine hair for Clenbuterol, and this is set out at \$85
17 per sample. Because of the decrease in the number of
18 canine samples, these increases will only result in the
19 total increase and the total amount paid to TVMDL for
20 2017 of approximately \$3,000.

21 CHAIRMAN PABLOS: Commissioners, any
22 technical or clarifying questions of Mark?

23 MR. FENNER: Mr. Mays is available if you
24 have any questions for him.

25 CHAIRMAN PABLOS: Is there anyone signed

1 up to speak on this item?

2 MS. BIJANSKY: No, sir.

3 CHAIRMAN PABLOS: So at this time I'd like
4 to entertain a motion to approve the MOU WITH TVMDL for
5 Fiscal Year 2017.

6 VICE-CHAIRMAN EDERER: Make a motion.

7 COMMISSIONER HICKS: I second.

8 CHAIRMAN PABLOS: Commissioner Ederer,
9 seconded by Hicks. Any discussion, Commissioners?

10 At this time I'd like to bring this up for
11 a vote. All those in favor, please signify by saying
12 "aye."

13 COMMISSION: Aye.

14 CHAIRMAN PABLOS: Any opposed?

15 Okay. That motion carries. Thank you.

16 Item F, Approval of the Internal Audit
17 Plan For Fiscal Year 2017. I'd like to recognize Monday
18 Rufus, please. Good morning. Afternoon. Good morning.

19 MR. RUFUS: Good morning, Mr. Chairman,
20 Commissioners. My name is Monday Rufus with the CPA
21 firm of Monday Rufus & Company, PC. I'd like to also
22 recognize my longtime associate there, Robert Gonzalez,
23 CPA.

24 As required by Texas Internal Auditing
25 Act, Government Code 2102.008, we have prepared the

1 audit plan for Fiscal Year 2017. We prepared a risk
2 assessment to determine the areas in the Texas Racing
3 Commission that should be considered for audit. And
4 based on that risk assessment, our audit plan for Fiscal
5 Year 2017 is Licensing Applications and Registrations.
6 Your approval of the plan is required. I will also be
7 more than happy to entertain any questions that you may
8 have related to the risk assessment and the audit plan.

9 CHAIRMAN PABLOS: Commissioners, any
10 questions of Mr. Rufus?

11 COMMISSIONER NORTH: Mr. Chairman, I've
12 got some questions.

13 CHAIRMAN PABLOS: Yes, please.

14 COMMISSIONER NORTH: Thank you, Mr. Rufus.

15 MR. RUFUS: Thank you.

16 COMMISSIONER NORTH: A hundred and -- I
17 know that this is an increase over the hours from last
18 year. I spoke with our internal auditors, and it still
19 seemed like a very small amount of hours. Do you feel
20 like you'll be able to complete the objectives of the
21 audit in 150 hours?

22 MR. RUFUS: Yeah, we should be able to
23 complete the item that we have selected for audit. If
24 you look at the last page of the audit plan, that's a
25 list of all the internal units, and then the risk level

1 for each of the internal units. That Licensing
2 Application and Registration was the first one when we
3 did the risk assessment. There are also other high-risk
4 areas, but we also have to work, you know, within the
5 confines of the contract that we have for internal
6 audit. The budget for internal audit Fiscal Year 2017
7 is \$15,000, and with that, we can only do one audit.

8 CHAIRMAN PABLOS: Commissioner North, is
9 there a concern from your experts that perhaps we're not
10 spending enough time on it? I'd like to understand a
11 little bit more what they are telling you.

12 COMMISSIONER NORTH: Just from their
13 perspective, it seems like a very small number of hours
14 that they felt like they wouldn't be able to do a
15 similar internal audit in that -- in such a low number
16 of hours.

17 She did wonder about -- in the internal
18 audit plan, it said that it's going to take from October
19 2016 through August 2017, which seems like a lot of time
20 for only 150 hours.

21 MR. RUFUS: Usually we do not start in
22 October. That just gives us a span, a time span of the
23 time that we have to complete the audit. The audit
24 could begin in June of 2017. It could begin in July of
25 2017. It could begin in February of 2017. We just have

1 to work with management with the time and when --
2 however the audit would be completed within that
3 particular period.

4 CHAIRMAN PABLOS: So Commissioner, it
5 seems to me that a lot of this is being driven by the
6 finances, by the budget, the constraints that you've
7 been given. Is this perhaps, Chuck, an item that we
8 ought to look to, to perhaps expand so that we can get
9 to a point where there's certain comfort, particularly
10 at the comptroller's office, with respect to this, or
11 what would be a recommendation there, because if there
12 is a concern that we're perhaps not allotting enough
13 resources to this item, then I'd like to look at it,
14 especially given that it's the audit.

15 MR. TROUT: We can go to the Legislature
16 and ask for more appropriations for that, sure.

17 CHAIRMAN PABLOS: Would that be something,
18 Commissioners, that you would be asking Chuck to do? I
19 don't want to open a can of worms, obviously, but if
20 there is, you know, even a slight level of concern
21 about, you know, the leeway that we're giving Mr. Rufus
22 or any other auditor, then I would ask that we entertain
23 a --

24 MR. RUFUS: If I may --

25 COMMISSIONER HICKS: Commissioner, could I

1 ask one question? Is there something that they're --
2 they're missing in the internal audit that's not here
3 that you -- that she thinks we should be looking at? I
4 mean, looking at -- this is like most internal audits
5 when I look at it. So is there a specific area that she
6 would like for us -- them to look at that's not in the
7 plan?

8 COMMISSIONER NORTH: No. It's just in
9 wondering how it can be done in --

10 CHAIRMAN PABLOS: Just a
11 general observation.

12 MR. RUFUS: Yeah, I mean, I do understand.
13 And we do have other contracts as well with other
14 agencies. As a matter of fact, this is the smallest,
15 you know, that we have.

16 If the resources were there, you know, we
17 would select -- if you go to Page 13, they have some
18 high-risk areas. You know, we would look at cash
19 disbursement as well. We would look at Information
20 Systems - Security as well. We look at Reporting -
21 Performance Measures, but the fact is the contract is
22 \$15,000 a year, and that includes doing the audit plan
23 and the risk assessment and also doing an audit. So
24 considering that, we can only be able to do one of the
25 audits in lieu of doing three or four more.

1 COMMISSIONER NORTH: So we had noticed
2 that we had done the same topic in 2013.

3 Is there a reason we're repeating the same
4 topic so soon?

5 MR. RUFUS: Yes. So we do a risk
6 assessment. We look at different attributes that we use
7 when we do the risk assessment. One is the materiality
8 level. If you go to Page -- if you go to Page 9 of the
9 audit plan, which is actually Page 33 in your packet.
10 There are about eight items there that we use, the risk
11 factors. One of them is the exposure level. The
12 exposure level for that particular auditable unit was
13 very high. I mean, if something were to happen as a
14 result of issuing a license to the wrong person, how the
15 agency would be perceived by the public.

16 The next one is the complexity of the
17 unit, that particularly are highly complex. You have
18 different licenses that you issued to different
19 individuals. So we looked at that. Also, the dollar
20 amount that flows to that particular system, which is
21 the materiality level, No. 3.

22 And No. 4 is the result of last audit.
23 What did we find when we did the audit, you know
24 previously. The other one is extent of other coverage
25 or oversight. If somebody else other than internal

1 audit, the division function within the agency, looking
2 at that particular program. We assigned risks to that
3 based on that. The quality of internal control and
4 adherence to laws. When we looked at it before, what
5 type of controls were in place? We consider that as one
6 of the risk factors.

7 The next one is changes in systems and the
8 processes. Have there been any major changes? It could
9 be even legislative changes pertaining or related to
10 that particular auditable unit. For example, the
11 licensing processes.

12 The other one is normal audit interval,
13 the last time we looked at it. So when you add all that
14 risk together, you come up with total risk for each
15 auditable unit, and that's exactly how we select the
16 area to be audited, and that's how license and
17 application and registration was selected.

18 And that does not necessarily mean that
19 that particular program is being poorly run. It's just
20 that when you add all the risk factors, you come up
21 high.

22 COMMISSIONER NORTH: Well, we would also
23 like to encourage staff to go ahead and post the
24 internal audit plans on their website. We know that it
25 hasn't been done in several years, and I don't think the

1 statute necessarily applies anymore that requires it
2 since the budget's gone under ten million a year that we
3 would encourage in honor of transparency to go ahead and
4 have them post it.

5 MR. RUFUS: I just want to add as well,
6 there is a report that is due November 4th, which is the
7 annual internal audit report for Fiscal Year 2016 that
8 would be shown in the audit that we did in 2016. We did
9 not handle the internal audit report. The annual
10 plan -- internal audit plan is included as part of that
11 annual report, which I know is supposed to be posted,
12 and we do release those reports to the state auditor's
13 office, Sunset Commission, LBB and the Governor's
14 office. So the information is out there also.

15 CHAIRMAN PABLOS: Given that we are
16 dealing, unlike other state agencies other than the
17 lottery who are dealing with gaming, we are dealing with
18 a very delicate subject. I think that perhaps, Chuck,
19 if it's okay with you, Commissioners, we ought to take a
20 look at how we might be able to add some more
21 transparency first and foremost with posting, but also
22 assurances that through an audit, we're able to capture
23 as much as we can within the limited constraints that we
24 have.

25 We may be increasing that budget to be

1 able to add at least another category that allows you to
2 go and delve in deeper. I think from a duty of care
3 perspective, I think that that would be an obligation
4 for us, but then again, I don't know, like I said
5 earlier, what kind of repercussions going back to the
6 lege and asking for more money on that it would entail.

7 So I think there are just a lot of moving
8 pieces, but, Chuck, I'm going to leave it to you if
9 it's -- if it's all right with everyone to look into it,
10 because I think Commissioner North brings up some very
11 good points. And again, I think the duty of care, given
12 that we are a regulator above gaming, requires that. Is
13 that all right with everyone?

14 MR. RUFUS: If I may add one more thing if
15 you don't mind.

16 CHAIRMAN PABLOS: Yes, sir.

17 MR. RUFUS: We're also required to report
18 to the state auditor's office. If there are any
19 high-risk items that we identified based on our risk
20 assessment that we're not actually auditing, we report
21 that as part of the annual internal audit report which
22 is due November 1st.

23 CHAIRMAN PABLOS: Okay. Thank you very
24 much. So, Commissioners, we're being asked to approve
25 the internal audit plan. Commissioner North, are you

1 okay with moving forward with me asking for a motion to
2 approve?

3 COMMISSIONER NORTH: Yes.

4 CHAIRMAN PABLOS: Okay. So I'd like to --
5 is there anyone signed up for this item?

6 COMMISSIONER HICKS: No, sir.

7 CHAIRMAN PABLOS: Okay. So I'd like to
8 ask for a motion to approve the internal audit plan for
9 Fiscal Year 2017. Do I have a motion?

10 COMMISSIONER STEEN: I'll make a motion.

11 CHAIRMAN PABLOS: First by Steen. Is
12 there a second?

13 COMMISSIONER MARTIN: Second.

14 CHAIRMAN PABLOS: Second by Martin. Any
15 further discussion on this audit, Commissioners? Okay.
16 At this time I'd like to bring this up for a vote.
17 Those in favor, please signify by saying "aye."

18 COMMISSION: Aye.

19 CHAIRMAN PABLOS: Any opposed? Okay.
20 That carries.

21 We'll move on to proceeding on racetracks.
22 I'd like to ask Mark Fenner to lay out Item A, please.

23 MR. FENNER: Yes, sir. Commissioners, you
24 may recall that at the April commission meeting, it took
25 up the review and renewal of Manor Downs, and Manor

1 Downs at the time notified us that it no longer intended
2 to pay the annual fees that were owed to the Commission,
3 and as a consequence, the Commission referred Manor
4 Downs' license to SOAH, the State Office of
5 Administrative Hearings for non-renewal proceedings.

6 Well, since that time, Manor Downs has
7 entered into a contract with the owners of Sam Houston
8 Valley and Laredo Race Parks to transfer the ownership
9 in the license to that group, and as part of their
10 efforts to make the license in good standing, they've
11 gone ahead and paid all the back fees that are owed to
12 the Commission. So they've recently delivered to the
13 Commission a check for \$172,000 and \$500. And they have
14 filed a new application for review and renewal.

15 So at this meeting you have the
16 opportunity, if you wish, to pull back the referral to
17 SOAH and to go ahead and renew the license as inactive
18 pending any potential consideration of the sale to the
19 Sam Houston group.

20 CHAIRMAN PABLOS: Commissioners, any
21 questions?

22 Okay. So we've got some folks signed up
23 to speak. I'd like to recognize Howard Phillips,
24 please.

25 MR. PHILLIPS: Commissioners,

1 Mr. Chairman, I think the evidence is before you. We
2 would like to get our license renewed. We've worked
3 very hard with Andrea, and I think we're about ready to
4 cross the goal line.

5 And I would also like to request that we
6 could call a November meeting so that we could possibly
7 transfer these assets from Manor Downs, Limited to the
8 Sam Houston Race Park entity, PM Texas, LLC. Any
9 questions?

10 CHAIRMAN PABLOS: Any questions,
11 Commissioners?

12 Thank you.

13 MR. FENNER: Thank you.

14 CHAIRMAN PABLOS: So as you all know,
15 we're required to have at least six meetings. This
16 meeting was our sixth meeting. And so we still have the
17 rest of October, November and December, and Howard
18 Phillips has asked for us to consider having a meeting
19 in November. And so I intend to honor that request
20 unless I hear otherwise. I think it's important to move
21 forward on that item. So we can have that discussion as
22 well.

23 Next signed up to speak is Marsha
24 Rountree, please.

25 MS. ROUNTREE: I haven't signed up to

1 speak, Mr. Chairman. The Texas Horsemen's Partnership
2 is in favor of moving forward with the license with
3 Manor Downs.

4 CHAIRMAN PABLOS: So recognized. Thank
5 you. And then Mary, are you also signing up to speak
6 or --

7 MS. RUYLE: No, sir. I don't wish to
8 speak. We just wanted to voice or relay our approval of
9 the transaction.

10 CHAIRMAN PABLOS: TTA's approval.
11 Excellent. Thank you. Okay. So I guess the first
12 thing I'll do is I'll entertain a motion to withdraw the
13 referral of Manor Downs' license to SOAH and to renew
14 their license as an inactive license. Is there a
15 motion?

16 COMMISSIONER EDERER: I make a motion.

17 CHAIRMAN PABLOS: Motion by Ederer.

18 Second --

19 COMMISSIONER SCHMIDT: I second.

20 CHAIRMAN PABLOS: -- by Schmidt. Okay.
21 So now let's have a discussion. So first and foremost,
22 is everybody here okay with having a November 15th
23 meeting? We're all good? Okay. So Mark, Chuck, will
24 you please note that? Any discussion on the item
25 itself? On the potential transfer? We've all heard

1 that. We do intend on visiting with the Lege on this.
2 I've asked Mark and Chuck to begin to set up meetings
3 with Senators Watson and Zaffirini on behalf of their
4 constituency, and also with representative Pena Raymond
5 and Dawnna Dukes. Although, Dawnna Dukes, as many of
6 you know, has stepped down. I don't know what the
7 situation there is, but this is within her jurisdiction.
8 And so we will be briefing them very shortly in person
9 about these items.

10 Okay. So any other comments? Okay. So
11 at this time I'd like to entertain -- excuse me -- I'd
12 like to take this up for a vote. All those in favor
13 please signify by saying "aye."

14 COMMISSION: Aye.

15 CHAIRMAN PABLOS: Any opposed? That
16 motion carries.

17 Item IV.B, Allocation by Texas Greyhound
18 Association Interstate Cross-Species purse money. I'd
19 like to recognize Curley Trahan to please lay out the
20 item.

21 MR. TRAHAN: Good morning again,
22 Commissioners. Under Section 303.102 of the rules, the
23 Texas Greyhound Association must pay to the greyhound
24 racetracks the purse money it collects pursuant to the
25 Act from Texas horse racetracks. The Act requires horse

1 racetracks to pay a purse in the amount of 5.5 percent
2 of interstate cross-species handled to the TGA for use
3 at greyhound racetracks in Texas.

4 The TGA must submit its recommended
5 distribution allocation to the Commission for approval.
6 On Page 46 of your meeting material is the proposed
7 allocation distribution by the TGA for the period of
8 November 25, 2016, through February 4 of 2017.

9 During that period, the TGA is requesting
10 all funds collected for the escrowed interstate
11 cross-species simulcast account and all funds collected
12 thus far in 2016, after allowable expenses, be allocated
13 to Valley Race Park for their live race meet.

14 Staff has reviewed the submitted proposed
15 allocation by the Texas Greyhound Association and
16 recommends approval. I'd be happy to answer any
17 questions.

18 CHAIRMAN PABLOS: Commissioners, any
19 questions?

20 Okay. Thank you very much.

21 Billy Galbreath of the TGA, would you like
22 to come up? You don't have to. I'm just wondering if
23 you --

24 You're all good?

25 Okay. Anyone else signed up to speak on

1 this item?

2 MR. FENNER: No, sir.

3 CHAIRMAN PABLOS: Okay. Commissioners, we
4 have staff recommendation to approve. I'd like to, at
5 this time, entertain a motion to approve the allocation
6 of the interstate cross-species purse money as requested
7 by the TGA. Hear a motion?

8 COMMISSIONER HICKS: I make a motion.

9 CHAIRMAN PABLOS: Motion by Hicks.

10 By the way, I'm sorry, Commissioner Hicks,
11 do you have anything -- any comments to share?

12 COMMISSIONER HICKS: No, I don't have
13 anything.

14 CHAIRMAN PABLOS: Given that you've been
15 so active.

16 COMMISSIONER HICKS: I think it's good.

17 CHAIRMAN PABLOS: Thank you. I apologize
18 for not having called on you.

19 COMMISSIONER HICKS: That's no problem.

20 CHAIRMAN PABLOS: Okay. So we do have a
21 motion from Commissioner Hicks. Is there a second?

22 MR. STEEN: Second.

23 CHAIRMAN PABLOS: Seconded by Steen. Any
24 discussion on this item, Commissioners? Okay. All
25 those in favor, please signify by saying "aye."

1 COMMISSION: Aye.

2 CHAIRMAN PABLOS: Any opposed? That
3 motion carries. We'll move on to Item C, the Allocation
4 of Funds for the Texas Bred Incentive Program as
5 provided under Commission Rule 321.505(b). I'd like to
6 recognize Curley again.

7 MR. TRAHAN: Commissioners, a portion of
8 the money wagered on simulcast races offered at horse
9 racetracks is dedicated to the accredited Texas Bred
10 Incentive Program. Commission Rule 321.505(b) requires
11 the Commission to determine the distribution or division
12 of funds after affording each official horse breed
13 organization an opportunity to present written
14 information addressing the criteria listed in Paragraph
15 2 of this subsection.

16 Alternatively, the breed organizations may
17 present to the Commission an agreement in lieu of
18 providing written information. The agreement must meet
19 two specific requirements. First, the agreement must be
20 signed by all of the official breed organizations
21 designated in the Act that participated in the program.

22 Secondly, the agreement must delineate the
23 percentages by which the accredited Texas Bred Program
24 funds generated from simulcasting are to be divided
25 among the various breeds of horses. You will find on

1 Pages 49 through 51 of your meeting material a submitted
2 agreement signed by all of the participating breed
3 registries in accordance with the rules.

4 The agreement lists the established
5 percentages by which the accredited, Texas Accredited
6 Program funds, will be allocated among the various
7 breeds of horses for Calendar Year 2017.

8 This agreement maintains the same
9 allocations that were approved for current year 2016.
10 Since all parties have agreed to the allocation and all
11 requirements of the rules have been met, staff
12 recommends approval of the submitted accredited Texas
13 Bred Incentive Program breed split agreement for
14 Calendar Year 2017. I'd be happy to answer any
15 questions.

16 CHAIRMAN PABLOS: Commissioners, any
17 questions? Thank you, Curley.

18 Anyone signed up to speak, Mark?

19 MR. FENNER: No, sir.

20 CHAIRMAN PABLOS: Okay. So,
21 Commissioners, we have staff's recommendation for
22 approval. At this time I'd like to entertain the motion
23 to approve.

24 COMMISSIONER MARTIN: Motion.

25 CHAIRMAN PABLOS: Motion by Martin.

1 Second?

2 COMMISSIONER SCHMIDT: Second.

3 CHAIRMAN PABLOS: Seconded by Schmidt.

4 Any discussion? All those in favor, please signify by
5 saying "aye."

6 COMMISSION: Aye.

7 CHAIRMAN PABLOS: Any opposed? That
8 motion carries.

9 Item D, allocation of purses provided
10 under Commission Rule 321.505(a). Mark?

11 MR. FENNER: I believe the plan was -- the
12 intention was to take up both D and E at the same time,
13 and Mr. Trahan can lay out these items for us.

14 CHAIRMAN PABLOS: Perfect. Curley, if you
15 could please lay out D and E together. E will be
16 Distribution of Funds in the Escrowed Purse Account
17 among the various breeds of horses under Commission Rule
18 321.505.

19 MR. TRAHAN: Commissioners, as of the
20 Texas Bred Incentive Program, a portion of the money
21 wagered on simulcast races in Texas is dedicated to
22 purses at the horse tracks, and to the escrowed horse
23 purse account from the greyhound track.

24 Pursuant to Commission Rule 321.505(a),
25 each year the race tracks must negotiate with

1 representatives of the officially recognized
2 organizations representing horse owners, trainers and/or
3 breeders for the allocation of purse funds earned at
4 each track.

5 Racetrack management then recommends to
6 the Commission the specific allocation of simulcast
7 purse revenue among the various breeds of horses at
8 their respective racetrack. The Commission may look to
9 criteria detailed in Subsection 321.505(a)(4) when
10 evaluating the racetrack's recommendations. However, if
11 the racetracks and all of the official horse industry
12 organizations reach a signed agreement, that agreement
13 may be presented to the Commission for approval.

14 The distribution of funds collected in the
15 escrow horse purse account is covered in Commission Rule
16 321.509. The funds set aside for the escrow horse purse
17 account are derived from simulcast wagering on
18 interstate racing at greyhound racetracks.

19 The rule requires that at least once a
20 year the commission shall distribute all funds accrued
21 in the escrow purse account to the horse racetrack. The
22 racetrack associations are required to recommend the
23 percentages by which the distribution of funds will be
24 divided among the various breeds of horses.

25 The Commission must determine first the

1 allocation among the tracks of the escrowed funds, and
2 secondly, the percentages to be divided among the breeds
3 at each of the tracks of their allocated portion. The
4 Commission may look to the criteria listed in Subsection
5 C of this section when evaluating the racetrack
6 association recommendation.

7 In lieu of this process, if the racetrack
8 association and the horse industry organizations reach
9 an agreement, they may submit that signed agreement to
10 the Commission for approval as long as the agreement
11 meets two criteria.

12 First, the agreement must delineate the
13 percentages by which the escrow purse account revenue
14 received by the association will be divided amongst the
15 various breeds of horses. Secondly, the agreement must
16 be signed by all organizations recognized by the
17 Commission or in the Act as representatives of horse
18 owners, trainers and/or breeders.

19 Commissioners, on Pages 55 through 89 of
20 your meeting material are the racetrack recommended
21 allocations of the simulcast purse funds as well as the
22 recommended distribution of the escrow purse funds.

23 In addition, included are the letters of
24 support for each of the various horse industry
25 organizations. At each of your chairs you should have

1 also received a supplemental copy of a letter from the
2 Texas Paint Horse Breeders Association representing
3 their written signed approval of the splits for Lone
4 Star Park and Retama Park.

5 All racetracks have recommended
6 maintaining the status quo for Calendar Year 2017 for
7 both sets of purse funds. Additionally, all recognized
8 breed organizations and the horsemen's representative
9 organization are in support of the racetrack's
10 recommendation.

11 Having met all requirements of the rules,
12 staff recommends approval of the allocation of simulcast
13 purses and the distribution of funds from the escrow
14 purse account as recommended to the Commission by the
15 racetracks and agreed upon by the horse industry
16 organizations. I'd be happy to answer any questions.

17 CHAIRMAN PABLOS: Commissioners, any
18 questions? Thank you.

19 MR. TRAHAN: Thank you.

20 CHAIRMAN PABLOS: Mark, is anyone signed
21 up to speak on this item?

22 MR. FENNER: Ms. Rountree of the Texas
23 Horsemen's Partnership has submitted a testimony card.
24 She does not wish to testify, but she has indicated
25 support for approval.

1 CHAIRMAN PABLOS: Thank you.

2 Okay. So, Commissioners, we have staff's
3 recommendation for approval at this time. I'd like to
4 entertain a motion to approve. Do we have a motion?

5 COMMISSIONER EDERER: So move.

6 COMMISSIONER HICKS: Second.

7 CHAIRMAN PABLOS: Seconded by Hicks. Any
8 further discussion? Okay.

9 All those in favor, please signify by
10 saying "aye."

11 COMMISSION: Aye.

12 CHAIRMAN PABLOS: Any opposed? That
13 motion carries. We'll take Items F, G and H together.
14 I'd like to recognize Mark Fenner to lay out the item,
15 please.

16 MR. FENNER: Yes, sir. The first two are
17 concession contracts that were discovered during the
18 ownership and management review of Sam Houston and
19 Valley Race Parks. They are mixed beverage and beer
20 licenses. We've reviewed the contracts that are in
21 accordance with the Act. We also reviewed the status of
22 their licenses with the Alcoholic Beverage Commission.
23 They're in good standing with TABC. And staff
24 recommends approval of those two.

25 There is also an agreement between Retama

1 Park and The Bracken Store Cafe. This is not an
2 alcoholic beverage contract. This is just for the
3 provision of restaurant services. They are in good
4 standing with the Commission. The primary person is
5 licensed with us. The licenses -- the contract is in
6 accordance with the Act. So we recommend approval of
7 that as well.

8 CHAIRMAN PABLOS: Okay. Commissioners,
9 any questions? Staff is recommending approval. I'll
10 entertain a motion to approve.

11 COMMISSIONER MARTIN: So move.

12 CHAIRMAN PABLOS: Moved by Martin.

13 COMMISSIONER SCHMIDT: Second.

14 CHAIRMAN PABLOS: Seconded by Schmidt.
15 Any discussion on this item? Okay. All those in favor,
16 please signify by saying "aye."

17 COMMISSION: Aye.

18 CHAIRMAN PABLOS: Any opposed? That
19 motion carries. Thank you.

20 We're moving to Item 5, proceeding on
21 rule-making. I'd like to take up items A through G.
22 I'd like to recognize Mark Fenner.

23 MR. FENNER: Yes, sir. These are a number
24 of technical amendments to the parimutuel rules that are
25 being done in accordance with the rule review of

1 Chapter 321 will be taken up at the Rules Committee
2 meeting on September 27th.

3 The first change was to 321.2, corrects an
4 incorrect internal reference to another rule. So it was
5 just pointing it to the correct rule instead.

6 The second change was just the 321.11,
7 updates outmoded references to magnetic media to a more
8 current phrase, removable electronic media.

9 The changes to 321.35, 41 and 42, which
10 are in Subparts C through E are making changes to
11 address the elimination of the outstanding unclaimed
12 tickets from our revenue stream. It used to be that the
13 outs, as they are called, used to go to the agency and
14 be part of our funding.

15 And so as part of our funding, we kept a
16 pretty close accounting of any payouts to make sure that
17 they weren't paying out money that belonged properly to
18 the Commission. But since that's no longer a part of
19 the income stream, we don't need to maintain such a
20 close accounting of it. After all, this is their money.
21 If they want to pay it out, we don't really have an
22 issue with that.

23 Now, we still have a pretty close
24 oversight if they refused to make a payout, but still
25 want to check it out and make sure the patron is

1 properly being paid, but it eliminates some of these
2 auditing requirements where they're no longer needed.

3 CHAIRMAN PABLOS: Commissioners, any
4 questions, particularly members of the Rules Committee?
5 Any comments, questions? Okay.

6 So, as you know, the process for rule
7 proposal is to publish them. And so at this time I'd
8 like to entertain a motion to publish a rule proposal,
9 described in Items V.A through V.G in the Texas Register
10 for public comment. Is there a motion?

11 Motion by --

12 MR. FENNER: I didn't cover F and G. I'm
13 sorry. Let me do F and G. I apologize, Mr. Chairman.
14 I thought we were only doing through E.

15 F is a proposal to amend the notice of
16 hearing provisions relating to the 307.62. This was
17 about disciplinary hearings for licensees. Right now,
18 the rule provides that -- it doesn't fully describe how
19 notice is to be given. What this does is to say that
20 you can deliver notice by hand, which is how we
21 typically do it.

22 We can also notice -- give notice by
23 certified mail, also by regular mail, both at the same
24 time, and it also provides that we be able to provide
25 notice by electronic mail if we can verify that the

1 person actually received the e-mail.

2 The change to G would create a new
3 subsection in J to that same rule, 307.62, and set out
4 the parameters by which the parties would exchange
5 discovery, and it would also provide that if a party
6 didn't produce discovery when it was requested, that the
7 stewards or racing judges would have the opportunity or
8 the option to exclude that -- that information or that
9 evidence that hadn't been disclosed as it should have
10 been. Questions?

11 CHAIRMAN PABLOS: Any questions? I
12 apologize for being overly eager to get us out of here.
13 Okay. So we're all good?

14 MR. FENNER: Yes, I think so.

15 CHAIRMAN PABLOS: Okay. So now, is there
16 anyone signed up to speak? So now I'll entertain a
17 motion. Commissioner Steen, are you still good?

18 COMMISSIONER STEEN: Still good.

19 CHAIRMAN PABLOS: And second?

20 COMMISSIONER EDERER: Second.

21 CHAIRMAN PABLOS: Seconded by Ederer.
22 Okay. Any further discussion on this? All those in
23 favor, please signify by saying "aye."

24 COMMISSION: Aye.

25 CHAIRMAN PABLOS: All those opposed? That

1 motion carries.

2 Rule adoption, Rules -- or excuse me.
3 Item H, adoption of amendment to Rule 303.102, greyhound
4 rules. Mark?

5 MR. FENNER: Yes, sir. This is the
6 proposal that was published in the August 26th, 2016
7 edition of the Texas Register. It describes how the
8 accredited Texas Bred funds that are accumulated between
9 meets, greyhound meets, will now be distributed across
10 the now shorter kind of seasonal greyhound meets.

11 We discussed it at the Rules Committee
12 meeting on September 27th. We received no public
13 comment other than support from the TGA. We've not
14 received any written comments about this during the
15 comment period. I know Mr. Galbreath is here if you
16 have any questions for either him or me.

17 CHAIRMAN PABLOS: Commissioners, any
18 questions of TGA or Mark? Anyone signed up to speak?
19 Okay. So I'd like to entertain a motion to adopt the
20 amendment of Rule 303.102 as published in the Texas
21 Register. Do I have --

22 COMMISSIONER HICKS: I'll make the motion.

23 CHAIRMAN PABLOS: Motion by Hicks. Is
24 there a second?

25 COMMISSIONER SCHMIDT: Second.

1 CHAIRMAN PABLOS: Second by Schmidt. Any
2 discussion? Okay. I'd like to take this up for a vote.
3 All those in favor, please signify by saying "aye."

4 COMMISSION: Aye.

5 CHAIRMAN PABLOS: Any opposed? That
6 motion carries. Item 6, executive session. We will
7 have executive session today. So at this time, being
8 12:03, we'll enter into executive session under
9 Government Code 551.074(a)(1) to deliberate the
10 appointment, employment, evaluation, reassignment,
11 duties, discipline, or dismissal of the executive
12 director. Thank you.

13 (Executive Session 12:03 - 12:16)

14 CHAIRMAN PABLOS: Okay. The time is
15 12:16. We are reconvening out of executive session.
16 We've discussed the executive director's position, and
17 will take no action at this time.

18 So moving on to Item 7, scheduling the
19 next commission meeting. Reminder, we will be meeting
20 on November 15th, same time. Chuck, can we assume that
21 it will be the same place?

22 MS. WELCH: It's a possibility.

23 CHAIRMAN PABLOS: Well, we'll let you know
24 in plenty of time, but at least we have the meeting
25 locked in for 10:30, November 15th.

1 Any questions, comments, before I adjourn?
2 Okay. The time is now 12:17. At this time I'd like to
3 adjourn today's Texas Racing Commission meeting. Thank
4 you, Commissioners. Thank you, everyone on staff.
5 Appreciate it.

6 (Meeting adjourned at 12:17 p.m.)
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REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF TRAVIS)

I, DELLA M. ROTHERMEL, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the above-captioned matter came on to hearing before the TEXAS RACING COMMISSION as hereinbefore set out.

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

GIVEN UNDER MY OFFICIAL HAND OF OFFICE at Austin, Texas, the 26th day of October, 2016.



DELLA M. ROTHERMEL
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