

MEETING

STATE OF CALIFORNIA

HORSE RACING BOARD

In the Matter of:)
)
Regular Meeting)
)

SANTA ANITA RACE TRACK

BALDWIN TERRACE ROOM

285 WEST HUNTINGTON DRIVE

ARCADIA, CALIFORNIA

THURSDAY, FEBRUARY 26, 2009

9:42 A.M.

Reported by:
Troy A. Ray

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMISSIONERS

John C. Harris, Vice Chairperson

John Andreini

Jesse H. Choper

Bo Derek

David Israel

Jerry Moss

STAFF

Kirk Breed, Executive Director

Richard Bon Smith, Assistant Executive Director

Robert Miller, Staff Counsel

Jacqueline Wagner, Regulations/Legislation Manager

Mike Marten

ALSO PRESENT

Robert Hartman, General Manager, Golden Gate Fields

Marsha Naify, TOC

Tom Robbins, Racing Secretary, Del Mar

Barry Broad, Jockeys' Guild

Drew Couto, TOC

Jack Liebau, Hollywood Park

Craig Fravel, Del Mar Thoroughbred Club

Ed Halpern, California Thoroughbred Trainers

Rick Pickering, Alameda County Fairgrounds

Darrell Haire, Jockeys' Guild

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APPEARANCES CONTINUED

ALSO PRESENT

Cliff Goodrich, Fairplex

Dr. Rick Arthur, Equine Medical Director

Dr. Scott Stanley, UC Davis

Rod Blonien, Alameda County Fairgrounds

Richard Castro

Gerald Cunningham, BetFare

Cotel Hewitt, BetFare

Richard Shapiro, Past President of CHRB

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PROCEEDINGS

EXECUTIVE DIRECTOR BREED: This is the Regular Noticed Meeting of the California Horse Racing Board on Thursday, February 26, 2009, at Santa Anita Park Racetrack, 285 West Huntington Drive, Arcadia, California.

Present at today's meeting are acting Vice Chairperson -- acting Chairman, Vice Chairman John Harris, Jerry Moss, Bo Derek, David Israel, Jessie Choper, and John Andreini.

Before we go onto the business of the meeting, I need to make a few comments.

The Board invites public comments on the matters appearing on the meeting agenda. The Board also invites comments from those present today on matters not appearing on the agenda, during a public comment period, if the matter concerns horseracing in California.

In order to ensure all individuals have an opportunity to speak and the meeting proceeds in a timely fashion, the Chair will strictly enforce the three-minute time limit rule for each speaker.

The three-minute time limit rule will be enforced during discussion of all matters state on the agenda, as well as during the public comment period.

There is a public comment sign-in sheet for each agenda matter on which the Board invites comments. Also,

1 there is a sign-in sheet for those wishing to speak during
2 the public comment period for matters not on the Board's
3 agenda, if it concerns horseracing in California.

4 Please print your name legibly on the public
5 comment sign-in sheet.

6 When a matter is open for public comment your name
7 will be called. Please come to the podium and introduce
8 yourself by saying your name and organization clearly.

9 This is necessary for the court reporter to have a
10 clear record of all who speak.

11 When your three minutes are up, the Chairman will
12 ask you to return to your seat so others can be heard.

13 When all the names have been called, the Chairman
14 will ask if there is anyone else who would like to speak on
15 the matter before the Board. Also, the Board may ask
16 questions of individuals who speak.

17 If a speaker repeats himself or herself, the
18 Chairman will ask if the speaker has any new comments to
19 make. If there are none, the speaker will be asked to let
20 others make comments to the Board.

21 Thank you.

22 Mr. Chairman.

23 COMMISSION VICE CHAIRPERSON HARRIS: Thank you.
24 I'd like to welcome everyone to the meeting.

25 We have a relatively short agenda, but several

1 items that we'll go pretty in-depth into.

2 First of all, I'd like to welcome a couple of new
3 faces to the California racing scene, from BetFare, which as
4 you know recently acquired TVG and has some interesting
5 platforms in Europe and England.

6 Gerald Cunningham is here. Would you like to
7 stand up?

8 MR. CUNNINGHAM: Hi.

9 COMMISSION VICE CHAIRPERSON HARRIS: Hi. And
10 Cotel Hewitt, who is also associated with BetFare. So
11 you'll be seeing them around at these meetings, I'm sure.

12 And they plan to do a presentation on some of the
13 BetFare background at a future meeting, and there are some
14 interesting concepts.

15 Also, would like to welcome Richard Castro back to
16 our midst. He's missed a few meetings and missed you.

17 MR. CASTRO: Thank you very much.

18 COMMISSION VICE CHAIRPERSON HARRIS: The first
19 item on the agenda, the approval of Minutes of the Regular
20 Meeting of January 15th.

21 I do appreciate the staff getting these back for
22 February, so we can review them.

23 Do we have any additions or corrections to that?

24 If not, can I have a motion to approve?

25 COMMISSIONER ISRAEL: So moved.

1 COMMISSION VICE CHAIRPERSON HARRIS: Is there a
2 second?

3 COMMISSIONER DEREK: Second.

4 COMMISSION VICE CHAIRPERSON HARRIS: Second, okay.
5 All in favor, aye.

6 (Ayes.)

7 COMMISSION VICE CHAIRPERSON HARRIS: Okay, the
8 next item is discussion and action by the Board regarding
9 the proposed amendment of CHRB Rule 1853, Examination
10 Required, to allow thoroughbred horses to race unshod.

11 This actually has been in effect as an
12 Executive --

13 EXECUTIVE DIRECTOR BREED: Directive.

14 COMMISSION VICE CHAIRPERSON HARRIS: -- Directive
15 for a while, but we need to move forward with the actual
16 rule-making process.

17 So who is going to report on this?

18 EXECUTIVE DIRECTOR BREED: It pretty well stands.

19 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

20 EXECUTIVE DIRECTOR BREED: We've included in the -
21 - Mr. Chairman, we've included in the report some of the
22 analysis that we have -- that's been conducted. The data's
23 been collected on the number of horses running unshod.

24 We think that it's a good program and it seems to
25 be that the racing industry thinks it's a good program, so

1 especially with the synthetic surfaces.

2 So I recommend the Board approve it. Approve the
3 regulation as written.

4 COMMISSION VICE CHAIRPERSON HARRIS: There's
5 extensive background in the packets, which are on the
6 website, if anyone goes to it. There's a lengthy article by
7 a veterinarian, talking about unshod horses and the whole
8 debate on shoeing versus not shoeing, that I'd suggest
9 everybody review.

10 We've got a couple comments on this. Robert
11 Hartman.

12 MR. HARTMAN: Robert Hartman, General Manager,
13 Golden Gate Fields.

14 As you can see in your packet, close to 200 horses
15 have raced unshod at Golden Gate Fields. And our vets say
16 it's helped their horses tremendously.

17 I have a document here from Diane Isabel, who's
18 our track vet, and I'll just read some of her comments.

19 "Knees and ankles have less filling and heat when
20 training and racing barefoot, than they did in shoes.
21 Horses trained and raced barefoot have less body soreness.
22 More and more trainers are starting to train barefoot, but
23 some are still hesitant to race barefoot."

24 But she believes, as they see the success of the
25 horses racing barefoot, more and more are going to go that

1 way.

2 So I'll submit this document to the Board for your
3 review. I'll give it to Jackie.

4 But our track vets say it's been a great program
5 and they would love to see it continue.

6 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, I think
7 it's great that the vet there, Dr. Isabel, was a leader in
8 this.

9 And also, I understand, Golden Gate has put in
10 bridal paths where the horses don't have to walk on asphalt
11 to get on the track now?

12 MR. HARTMAN: That's correct. We used to have
13 concrete throughout the barn area and we've created paths
14 with tapita and rubber surfaces so that barefoot horses can
15 walk on a softer surface to get to the racetrack.

16 COMMISSION VICE CHAIRPERSON HARRIS: Any other
17 comments on this item?

18 If not, I think we need a motion to put it out
19 formally for the rule-making process.

20 EXECUTIVE DIRECTOR BREED: That's correct.

21 COMMISSIONER DEREK: I motion.

22 COMMISSION VICE CHAIRPERSON HARRIS: Moved.

23 COMMISSIONER MOSS: Second.

24 COMMISSION VICE CHAIRPERSON HARRIS: Second.

25 Moved and seconded to put it out for comment and we'll get

1 it back in 45 days.

2 All in favor?

3 (Ayes.)

4 COMMISSION VICE CHAIRPERSON HARRIS: Okay, the
5 second item is the proposed amendment of our rule on Claimed
6 Horses, effectively would change the time that they could
7 run out of state from 60 days after the close of a race
8 meeting to 60 days, period, from the date of the claim.

9 And there's some various background on this. But
10 why don't we open it up to comment from -- I think TOC,
11 Marsha Naify has a comment.

12 MS. NAIFY: Marsha Naify, TOC. Actually, I don't
13 really have a comment, but I just wanted to say that
14 actually our board is still reviewing this.

15 So if it goes out to -- if you decide to change
16 it, it will go out to public comment and we'll have a
17 comment at that time.

18 But we really haven't had a chance to look this
19 over enough, yet. So we will by the next Board meeting.

20 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, the
21 issue is -- Commissioner Choper could probably explain it
22 better than any of us.

23 I mean, a horseman, if you have a horse here, I
24 think a lot of people like it to -- people -- basically, to
25 discourage someone from claiming it and taking it out of

1 state.

2 But, conversely, there are interstate commerce
3 laws that might think that our current rule is too harsh.

4 So I think some of our thoughts were that 60 days
5 would be something, but not so severe that it would really
6 create a court challenge.

7 But, Mr. Robbins?

8 MR. ROBBINS: Tom Robbins, Racing Secretary at Del
9 Mar.

10 I'm glad to hear that TOC is still in the review
11 process of it. We actually had a meeting with TOC back, I
12 think, late October, to discuss a number of racing issues
13 and this was one of them.

14 And there are actually two parts to the rule. The
15 rule that refers to the treatment of a horse that's claimed
16 in California races back in California, and the restrictions
17 placed upon that horse for the 25-day period.

18 The second part of the rule is the rule that
19 refers to the horse, or the treatment of the horse that is
20 claimed in California and then wishes to race outside of
21 California.

22 And in our meeting, back in October, we had a
23 lengthy discussion about part one of the rule and actually
24 reached agreement, which doesn't always happen with the
25 Racing Secretaries. And this was statewide Racing

1 Secretaries and the TOC Racing Affairs Committee.

2 And, yet, there was no discussion on the out-of-
3 state portion of this rule.

4 I think where we have to be careful and mindful is
5 that the reason this second part of the rule was changed
6 several years ago was, for those that don't recall, there
7 was an owner from the east coast that came into California,
8 and with the sole purpose of taking horses out of
9 California, and he was successful in claiming over a hundred
10 horses and taking them to the east coast. And I think we
11 can ill afford to have that happen right now.

12 And so I think whatever we do, we need to be
13 mindful of that, recognizing things have changed in
14 California.

15 Golden Gate now runs a seven-month meeting and
16 they have horsemen that they're successful in attracting
17 from other parts of the country. Canada, as well, and
18 Seattle.

19 And they support their meeting. If they come down
20 and lose a few horses through the claiming box and they
21 replace those horses, they don't want to be disadvantages by
22 not being able to run those horses until August, two months
23 after the meet effectively closes.

24 And so although this would offer a solution for
25 that, I think there are alternative solutions, too. That I

1 think if we can sit down, all of the Racing Secretaries
2 north, south, fairs, discuss some alternative ways of
3 dealing with this, we just don't want to be in a position
4 where we're opening the door up to out-of-state raiders, so
5 to speak. Thank you.

6 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, I think
7 that's the issue. In a perfect world, we would like to not
8 see the out-of-state raiders, but we deal with a lot of laws
9 that may question if you can really prohibit that to the
10 extent we were.

11 Do you want to comment?

12 COMMISSIONER CHOPER: Well, I wasn't here the last
13 time this was discussed. But it does say that we had an
14 opinion from the Attorney General's Office, which said that
15 "a rule prohibiting a horse claimed in a California race
16 from participating in any out-of-state for an extended
17 period of time would be unconstitutional."

18 I certainly think that's right.

19 And there are a lot of very well-motivated actions
20 the states take, but if the action is to protect themselves
21 as against out-of-state competition and, you know, that
22 quite frankly sounds to me like exactly what we're talking
23 about, then to put it modestly, it's very vulnerable to
24 attack, unless it's authorized by Congress. Which it's not.

25 COMMISSION VICE CHAIRPERSON HARRIS: You don't

1 think we've got a little bit of latitude that we can
2 differentiate between extended periods of time and there's
3 some connection we can say for 60 days that horse had
4 received benefits of being in California with our stabling
5 programs, and all this, that there should be some period
6 versus no period?

7 As a purist, maybe not?

8 COMMISSIONER CHOPER: No.

9 COMMISSION VICE CHAIRPERSON HARRIS: That's what I
10 thought. I hated to ask that, actually.

11 COMMISSIONER CHOPER: Now, what -- I don't know
12 exactly what our obligation is. I know if it's a state law,
13 then the fact that someone thinks it's unconstitutional has
14 nothing to do.

15 Bob, you'll correct me if I'm misstating this. I
16 should let you state it anyway but --

17 STAFF COUNSEL MILLER: Go ahead.

18 COMMISSIONER CHOPER: But we're obliged to follow
19 state law, even though someone makes a strong argument that
20 it's unconstitutional under the Federal Constitution.

21 But this is a rule and not a law, and I don't know
22 exactly how that fits into that scheme.

23 STAFF COUNSEL MILLER: But, no, it would be
24 considered law, it's a rule adopted pursuant to statute.
25 And if -- constitutional issues, objections can be raised,

1 and it will be treated by the court as if it was, you know,
2 a rule of law.

3 COMMISSIONER CHOPER: But we're, the Board, is not
4 supposed to be bound in any way by what it believes are the
5 requirement of Federal law?

6 STAFF COUNSEL MILLER: I didn't understand that.

7 COMMISSIONER CHOPER: If a rule looks like it
8 violates the commerce clause, what are we supposed to do
9 about it?

10 STAFF COUNSEL MILLER: If you believe that it does
11 violate the commerce clause, you should --

12 MR. BROAD: Excuse me. There's a provision of the
13 California Constitution that says that "no state agency
14 can" --

15 EXECUTIVE DIRECTOR BREED: State your name,
16 please.

17 MR. BROAD: Barry Broad. -- "can take action on
18 the basis that its regulation violates the constitution."

19 In other words, you can't declare your own stuff
20 unconstitutional.

21 COMMISSIONER CHOPER: Even if it's your own
22 regulation and not a statute?

23 MR. BROAD: Even if it's your own regulation. So
24 you have to -- I mean, you can decide not to do
25 something --

1 COMMISSIONER CHOPER: I understand.

2 MR. BROAD: -- because there's doubt, but you
3 can't --

4 COMMISSIONER CHOPER: But not because we're
5 obliged to do so in any way.

6 MR. BROAD: Exactly.

7 COMMISSIONER CHOPER: Indeed, quite the contrary.

8 MR. BROAD: Right.

9 COMMISSIONER CHOPER: So I guess, then, the answer
10 is that if we think it's a good rule, then we ought to stick
11 with it until someone challenges it --

12 COMMISSION VICE CHAIRPERSON HARRIS: Until we get
13 caught -- I mean, challenged.

14 (Laughter.)

15 COMMISSIONER CHOPER: Yeah.

16 COMMISSION VICE CHAIRPERSON HARRIS: "Caught's"
17 kind of a severe term. But, I mean, that's what it really
18 amounts to, which is the one reason I was leaning towards a
19 lesser period of time, because that lessens the challenges
20 that might be out there.

21 But I'm not clear, if we've got the rule and we
22 should never have had it in the first place, or we can just
23 push the envelope and figure if somebody challenges it, then
24 we'll cross that bridge when we get to it.

25 MR. COUTO: Drew Couto, Thoroughbred Owners of

1 California.

2 I'd like to ask the Board if they'd be willing to
3 share that Attorney General opinion with us, because we have
4 some -- the way in which it's being explained today, and
5 previously, we're not confident in the analysis given that
6 we think we're talking not about a right, but a privilege
7 under licensed activity.

8 And Commissioner Choper, I'd have to defer to you,
9 you are the scholar on constitutional law.

10 But we'd nonetheless like to see that, to get an
11 understanding of how it was analyzed, whether it was
12 analyzed from the stand point of a privilege or a right, and
13 get a better understanding of it.

14 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, we've
15 got the opinion. The opinion was in the packet, I think,
16 but let's be sure to provide it.

17 MR. COUTO: Okay. I didn't -- if I missed it, I
18 apologize. I thought it was a summary from staff.

19 COMMISSION VICE CHAIRPERSON HARRIS: I
20 thought -- maybe we just referred to the opinion.

21 COMMISSIONER CHOPER: Yeah, we just referred to
22 it.

23 EXECUTIVE DIRECTOR BREED: You just referred to
24 it.

25 MR. COUTO: The reason I asked that is that,

1 obviously, I didn't want you to waive any attorney/client
2 communication issues, but if you're willing to do that, that
3 would be great. It would be helpful to the rest of us,
4 trying to figure out what we can and can't do.

5 COMMISSION VICE CHAIRPERSON HARRIS: Yeah. And
6 that opinion is about four years old, too, so maybe it can
7 be revisited.

8 MR. COUTO: Okay.

9 COMMISSIONER CHOPER: See, I should say, the fact
10 that it's a license, it seems to me, doesn't cast very much
11 doubt about it.

12 If we refuse, for example, to license someone who
13 comes from out of state that's, in my judgment, a cold
14 violation of the commerce clause.

15 And if you put conditions on a license, you know
16 how to look, you can find a judge who will do most anything
17 someplace. But I would think it's an uphill battle, let me
18 just put it that way.

19 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, it
20 would be interesting to see if there's any other cases that
21 would support something like this.

22 COMMISSIONER CHOPER: Uh-hum.

23 COMMISSION VICE CHAIRPERSON HARRIS: But I don't
24 know if any California schools or medical school, or
25 something like that, can put a covenant on graduating that

1 you have to practice medicine in California, or something
2 similar to that.

3 But I think making it 60 days is not particularly
4 painful to anybody and it probably would not mount a
5 challenge.

6 COMMISSIONER CHOPER: Exactly. I mean, that would
7 be -- that's the very practical reason for that.

8 COMMISSION VICE CHAIRPERSON HARRIS: Uh-huh,
9 that's the reason I liked that but --

10 COMMISSIONER ISRAEL: Sixty days from the claim,
11 not 60 days --

12 COMMISSION VICE CHAIRPERSON HARRIS: From the
13 claim, yeah.

14 COMMISSIONER CHOPER: Yeah.

15 COMMISSION VICE CHAIRPERSON HARRIS: Which I would
16 think, technically, somebody could still challenge that, but
17 they're not as motivated.

18 Well, I think what we would plan to do here is put
19 this out for comment and then, obviously, we'd have more
20 time to debate it.

21 COMMISSIONER ISRAEL: It's presented for action?

22 COMMISSION VICE CHAIRPERSON HARRIS: Well, we
23 haven't moved it, yet.

24 COMMISSIONER ISRAEL: We can't put it out for
25 comment, it was presented for action.

1 COMMISSION VICE CHAIRPERSON HARRIS: Oh, this was
2 out for comment?

3 COMMISSIONER ISRAEL: It says action, that means a
4 vote, right?

5 COMMISSION VICE CHAIRPERSON HARRIS: Well, I think
6 the action is we're just putting it out for comment.

7 COMMISSIONER ISRAEL: Oh, okay.

8 COMMISSIONER ANDREINI: Why don't we just defer it
9 until the next meeting. I think we ought to just defer it
10 until the next meeting.

11 COMMISSION VICE CHAIRPERSON HARRIS: Well, I want
12 to put it out for comment and see what we get back, because
13 there might be some ways to fine tune it.

14 And, Jackie, this was just to go out for comment,
15 isn't it, this is not the final rule?

16 REGULATIONS/LEGISLATION MANAGER WAGNER: Correct.

17 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

18 REGULATIONS/LEGISLATION MANAGER WAGNER: If the
19 Board elects to take action, they may take a 45-day comment
20 period. But it sounds as if there's still some uncertainty
21 as to what the best course of action for this bill would
22 be -- for this rule would be.

23 So I don't know if you want to defer it for a
24 month and then come back?

25 COMMISSIONER ISRAEL: Well, this changes it from

1 60 days at the end of the meet to 60 days from the day of
2 claim; right?

3 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

4 REGULATIONS/LEGISLATION MANAGER WAGNER: Correct.

5 COMMISSIONER ISRAEL: So that --

6 COMMISSION VICE CHAIRPERSON HARRIS: I think
7 that's a pretty sound move, regardless of other fine tunes
8 that someone might have. I think it moves it closer to what
9 might be acceptable to the interstate commerce. Maybe it
10 doesn't really get you there, but it's a little bit closer.

11 COMMISSIONER ISRAEL: And does it change of the
12 rules that Tom Robbins was referring to?

13 COMMISSION VICE CHAIRPERSON HARRIS: No, the run-
14 back --

15 COMMISSIONER ISRAEL: The run-back?

16 COMMISSION VICE CHAIRPERSON HARRIS: Yeah. I
17 don't those were too big of changes anyway, really, but we
18 can see what comes up on that.

19 But I think TOC and the racing offices need to
20 define really what the consensus is, after including all the
21 different factions.

22 But I think this is a fairly big issue for some
23 people that could challenge it.

24 COMMISSIONER ISRAEL: Yeah.

25 COMMISSION VICE CHAIRPERSON HARRIS: Okay, can we

1 get a motion to put it out for comment?

2 COMMISSIONER ISRAEL: I'll move that.

3 COMMISSION VICE CHAIRPERSON HARRIS: Okay, is
4 there a second?

5 COMMISSIONER ANDREINI: I'll second it.

6 COMMISSION VICE CHAIRPERSON HARRIS: Okay, all in
7 favor?

8 (Ayes.)

9 COMMISSION VICE CHAIRPERSON HARRIS: Because I
10 think when we put things out for comment, obviously, just
11 because when it comes back we may well not make it a rule,
12 but at least we'll be able to revisit it.

13 COMMISSIONER MOSS: Maybe to resolve it for sure
14 at our next meeting.

15 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, we can
16 keep maneuvering on it --

17 COMMISSIONER MOSS: Going on it.

18 COMMISSIONER ISRAEL: Well, we can't because we've
19 got to go 45 days.

20 COMMISSIONER MOSS: Yeah, two meetings.

21 COMMISSIONER ISRAEL: We have two meetings.
22 Public comment means 45 days, right?

23 COMMISSION VICE CHAIRPERSON HARRIS: Well, we just
24 keep putting it back out. If we had another meeting and we
25 said, really, we want it to be differently stated, we could

1 put it out again for public comment, with a new version.

2 I mean, it doesn't really cost us very much just
3 to put it out for public comment, hopefully.

4 COMMISSIONER ISRAEL: Have any exceptions been
5 granted, ever, to this rule when people -- in a preposterous
6 example, somebody claims a good three-year-old in March,
7 runs him in the Santa Anita Derby and all of the sudden he
8 wins, and he's a Derby candidate, can he take him out of --

9 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, stakes
10 races are excluded.

11 COMMISSIONER ISRAEL: They are, okay.

12 COMMISSION VICE CHAIRPERSON HARRIS: So if you're
13 running in stakes it's --

14 COMMISSIONER ISRAEL: So if you move, okay. Fine.

15 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, stakes
16 is okay.

17 And one of the issues is if other states honor our
18 rule. I mean, it's a little gray if somebody claimed a
19 horse here and they send it to New Mexico, who has the
20 burden to tell that horse owner there that he can't run, and
21 I think it's kind of gone both ways.

22 COMMISSIONER ISRAEL: We have to close our borders
23 to horses escaping without a license.

24 MR. ROBBINS: As long as this rule has been in
25 place, and I think it's been five years, maybe longer, maybe

1 shorter, Jackie, we haven't had any complaints. Because all
2 other states have restrictions, as well, on horses leaving
3 their own state. And so it's accepted.

4 As far as we know, everybody has obeyed by our
5 rule, abided by our rule and not run horses counter to what
6 the rule has been.

7 We do track horses out of California.

8 COMMISSION VICE CHAIRPERSON HARRIS: Some of your
9 brethren in the harness industry might quarrel with that,
10 that there is a case that they feel they were --

11 EXECUTIVE DIRECTOR BREED: They're exempt, though.

12 COMMISSION VICE CHAIRPERSON HARRIS: What?

13 EXECUTIVE DIRECTOR BREED: They're exempt.

14 COMMISSION VICE CHAIRPERSON HARRIS: Oh, they
15 were? The harnesses were, because that was a case we got, I
16 think.

17 EXECUTIVE DIRECTOR BREED: Yeah, but they're
18 exempt under the present rule.

19 COMMISSIONER ISRAEL: Harness horses and quarter
20 horses are exempt.

21 REGULATIONS/LEGISLATION MANAGER WAGNER: Right.

22 COMMISSION VICE CHAIRPERSON HARRIS: Okay, because
23 isn't there some complaint that --

24 EXECUTIVE DIRECTOR BREED: There was a complaint.

25 COMMISSIONER CHOPER: Yes, yes, he sent us a

1 letter.

2 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

3 EXECUTIVE DIRECTOR BREED: Harness guys are
4 exempt. Quarter horse guys are not exempt.

5 COMMISSION VICE CHAIRPERSON HARRIS: What was the
6 guy sending us a letter about, then?

7 EXECUTIVE DIRECTOR BREED: I don't know. The
8 letter we got.

9 COMMISSIONER CHOPER: Yeah, I got the letter right
10 here. It's from a lawyer named Carlos --

11 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, we
12 fined the guy --

13 COMMISSIONER CHOPER: -- Carlo Fisco.

14 COMMISSION VICE CHAIRPERSON HARRIS: Okay. Well,
15 we've got to -- did we move on that or did we --

16 EXECUTIVE DIRECTOR BREED: You need to vote.

17 COMMISSION VICE CHAIRPERSON HARRIS: Okay, let's
18 take a vote for comment and we'll just keep debating it.

19 All in favor?

20 (Ayes.)

21 COMMISSION VICE CHAIRPERSON HARRIS: Okay. The
22 next is the rebate discussion, which really gets complicated
23 at times. But who's going to lead that?

24 EXECUTIVE DIRECTOR BREED: Let me make a little --

25 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

1 EXECUTIVE DIRECTOR BREED: Mr. Chairman, Members
2 of the Board, we've had a rule on the books for some time
3 now, which for the purposes of clarity, I'd like to read
4 that rule.

5 Rule Number 1950.1, Rebates on Wagers, states: "no
6 racing association or simulcast organization shall enter
7 into an agreement with any off-track betting facility --"
8 and that's a key term, "off-track betting facility," --
9 "unless the agreement contains a provision that prohibits
10 programs where the facility accepts less than the face
11 amount of wagers or agrees to refund or rebate any
12 consideration based on the face amount of any wagers to
13 patrons."

14 This rule was adopted in 1996. There was
15 considerable -- in March of 2004 there was -- the TOC, and I
16 think, I can't remember exactly which ADW company,
17 discussed -- before the Board discussed the rebate.

18 The present rule, as we interpret it, does not
19 include ADW companies or organizations, because it does not
20 constitute a betting facility.

21 Therefore, we propose either to amend the -- this,
22 the present rule, to include the ADW organizations in
23 prohibiting the rebate, or to allow everybody to rebate, one
24 of the two.

25 Because apparently right now it's not fair.

1 So anyhow, that's the rule change before the
2 Board.

3 And, of course, we're interested in all public
4 comment about this.

5 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, I think
6 I've got an open mind on this. I think there's good
7 arguments for and against rebates at different levels. And
8 I think that really the ultimate comes down to what the
9 horsemen and the tracks feel best serves the overall
10 interest of racing.

11 Let's hear some comments. What have we got on
12 this one? Oh, we've got Jack Liebau.

13 MR. LIEBAU: My name is Jack Liebau, I'm with
14 Hollywood Park. I also like to disclose I'm a Director of
15 Youbet.com.

16 I'd like to make two points and I'll do it rather
17 quickly.

18 First of all, rebating is a way of life. But as
19 Mr. Harper told me a little while ago, we shouldn't call it
20 rebating, we should call it a stimulus program.

21 (Laughter.)

22 MR. LIEBAU: So this stimulus program started with
23 offshore betting shops that gave rebates. And as I
24 recollect, there was a provision or a regulation that said
25 that every track in California, in its simulcast agreement,

1 was supposed to have a provision that you did not rebate.

2 Everybody has stimulus programs, whether it's the
3 offshore rebaters, whether it's the ADWs in some form,
4 whether it's the tracks that we send our signal to out of
5 state, the California tracks, in and of themselves have
6 stimulus programs that I think here, in California, we call
7 player rewards programs.

8 So my first point is rebates are here and
9 everybody is doing it.

10 My second point is that I do not think that it
11 makes any sense for the California Horse Racing Board to
12 take any action that discourages people from wagering on
13 California races. I mean, I just can't believe that you
14 would do that. We want people to wager on our races. And
15 anybody that encourages them to do it, I applaud.

16 And if you passed a rule that resulted in whether
17 it's ADWs, or it's Churchill Downs, or Naira, or whether in
18 the United States from -- well, first of all, I guess you'd
19 have to consider whether you can legally prohibit that from
20 happening out of state.

21 I mean, the rebates are going to be made available
22 then to other signals. And presumably, people that want to
23 have a rebate are going to bet on races conducted in states
24 other than California.

25 So, I mean, I just would urge you not to take any

1 action that discourages people from wagering on California
2 races. Thank you.

3 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, we got
4 a question.

5 COMMISSIONER ISRAEL: Can I ask a question?

6 COMMISSION VICE CHAIRPERSON HARRIS: Go ahead,
7 David.

8 COMMISSIONER ISRAEL: I tend to agree with you. I
9 just want to make sure that there is no way in which this
10 money is deducted from, A, the handle or, B, the takeout.
11 That it's considered, the money that's rebated, to come out
12 of a marketing budget or some other budget, so that it
13 doesn't affect what flows through to the horsemen and the
14 people --

15 MR. LIEBAU: With respect to the ADW providers, if
16 the wager was taken by a California resident, the rebate
17 would come out of the hub fee that the ADW provider
18 retained.

19 If the wager was made out of state, or offshore,
20 the host track, the track here in California, where the race
21 is conducted, gets X and that's what they get. The rebate
22 comes out of whoever took the wager. It does not diminish
23 the amount that the track gets.

24 COMMISSIONER ISRAEL: So it doesn't diminish
25 handle or takeout in any one of these circumstances that

1 you've described?

2 MR. LIEBAU: No, no.

3 COMMISSIONER ISRAEL: Okay.

4 MR. LIEBAU: At least that's my opinion.

5 It can impact the track's commission in
6 California, if California has a -- you know, for instance,
7 the California Marketing Commission has a players rewards
8 program or whatever.

9 EXECUTIVE DIRECTOR BREED: Jack, a question. If
10 you disagree that the rule should be changed to prohibit
11 rebates, then do you agree that it should be changed to
12 allow everyone to rebate?

13 MR. LIEBAU: Well, first of all, this goes back
14 many, many years to I think when -- too many years, John Van
15 de Camp and I were both co-chairmen of the California
16 Marketing Committee and there was some -- we had instituted
17 a players rewards program and it came up before the Board at
18 that point in time, and I guess in my usual, somewhat
19 obnoxious way, I challenged the Board to tell me where the
20 law was that prohibited a rebate.

21 There is no law in California, no statutory law,
22 that I know of, that prohibits a rebate.

23 There's a regulation --

24 COMMISSION VICE CHAIRPERSON HARRIS: There's a
25 regulation.

1 MR. LIEBAU: And the regulations, though, and this
2 is another part where I got into a little trouble before the
3 Board once. I said, the regulation says that you have to
4 have this provision in your simulcast agreement.

5 I think all of the tracks have it. It used to be
6 a thing that they'd check off when we sent them into the
7 California Horse Racing Board.

8 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, it
9 looks like now it's really a don't ask/don't tell situation.

10 MR. LIEBAU: I would say that's what it is.

11 But I mean, I just can't believe that you're going
12 to, one, discourage people from wagering on California races
13 and you're going to single out the ADW providers when you
14 got, you know, people offshore that make the ADWs' rebates
15 look like pikers.

16 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, another
17 popular term, sorry, besides stimulus right now, is
18 transparency.

19 Should there be transparency of what all the
20 different programs are?

21 MR. LIEBAU: I think it's pretty transparent, but
22 I think that's up to the various ADWs. I mean, the ADW
23 providers compete based on functionality of their site,
24 their marketing, customer service, and maybe whatever rebate
25 program they offer. I mean, that's the American way.

1 COMMISSIONER ISRAEL: Well, I think what John's
2 asking is will you provide us with what the rebate amounts
3 are, and percentages, at different betting levels?

4 I assume, if somebody bets \$100,000 a month they
5 get X, if they bet \$300,000 a month they get Y.

6 MR. LIEBAU: I'm sure every ADW provider is here
7 and can speak for themselves.

8 But I mean, there's sort of a feeling, I think,
9 that your better customers deserve a better price, or maybe
10 are in a position to demand a better price.

11 I don't really know what the interest is in the
12 California Horse Racing Board since it does not impact what
13 goes to purses.

14 COMMISSION VICE CHAIRPERSON HARRIS: No, I agree,
15 I think it's good to have competition. It's just my only
16 concern is if we set up some scheme that discouraged
17 competition, basically.

18 MR. LIEBAU: Or discourages betting on California
19 races, which is my main problem.

20 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

21 MR. LIEBAU: I want as many people as possible to
22 bet on Hollywood Park. And I'm sure Santa Anita and Del Mar
23 would agree with me.

24 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

25 COMMISSIONER CHOPER: As a racetrack operator, you

1 believe that this is good for Hollywood Park?

2 MR. LIEBAU: At this point in time, with rebating
3 or the stimulus programs being a way of life, yes.

4 If you asked me ten years ago, I think we might
5 have been better off without any rebates, whatsoever. But
6 they are what they are today.

7 COMMISSIONER CHOPER: They're part of the market
8 today.

9 MR. LIEBAU: Well, the horse is out of the barn,
10 yeah.

11 COMMISSIONER CHOPER: The notion is that if I make
12 my bet at Hollywood Park, that's going to be more beneficial
13 to the California horseracing industry, I take it, than if I
14 make it from my office, in California, over to wherever it
15 is, an ADW company, and the local industry gets less as a
16 consequence of that, right?

17 MR. LIEBAU: Well, depending on what --

18 COMMISSIONER CHOPER: So it encourages -- the
19 argument I've heard -- look, I think -- I agree with what
20 you said.

21 But it would be comforting to know that the
22 argument that says this is diverting money from being put
23 into the -- into the local handle directly, all right, at
24 the local -- bet locally, bet at the track.

25 MR. LIEBAU: Depending on what you bet, Mr.

1 Choper, I'll take care of you at Hollywood.

2 COMMISSIONER CHOPER: No, I understand.

3 (Laughter.)

4 COMMISSIONER CHOPER: No, seriously.

5 MR. LIEBAU: No, seriously. Seriously.

6 COMMISSIONER CHOPER: You mean you were saying any
7 of these whales that want to do business directly with you,
8 you'll compete with the ADW companies.

9 MR. LIEBAU: Well, I don't know if we compete, but
10 I will tell you that I don't think that some of these --
11 some clientele of our tracks would like to be characterized
12 as whales.

13 But if people bet significant amounts, they do get
14 rebates.

15 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, I think
16 we need to separate the different categories, though,
17 because ADW companies, we should really talk about the ADW
18 companies that are licensed in California, which is
19 relatively now four or five.

20 But I think what you're talking about, the whales
21 that are betting offshore someplace, that's a different kind
22 of a deal, that's not exactly what we think of as an ADW
23 company. But they've got more margins.

24 See, one of the problems with -- there's a limited
25 margin by the ADW companies in California, and the tracks to

1 give away. Where if some of those companies are buying a
2 signal for three or four percent, and they've got a 20
3 percent margin, they've got a lot more to work with.

4 MR. LIEBAU: Well, the margins are contracted for
5 the ADW companies rather rapidly.

6 COMMISSIONER VICE CHAIRPERSON HARRIS: Yeah.

7 MR. LIEBAU: So anyhow, I just had two points to
8 make and one was that the rebates are a way of life and, you
9 know, don't discourage people from betting on California
10 races.

11 COMMISSIONER ISRAEL: Jess, to answer part of your
12 question, I think -- Jess? If you bet a substantial amount
13 here, at Santa Anita, you can get rebates.

14 COMMISSIONER CHOPER: Uh-huh.

15 COMMISSIONER ISRAEL: If you're betting cash at a
16 window and they track they're betting --

17 COMMISSIONER CHOPER: No one ever told me that.

18 COMMISSIONER ISRAEL: Well, it's the case.

19 MR. FRAVEL: So you better pick it up a little
20 bit.

21 COMMISSIONER ISRAEL: The money's paid out of the
22 marketing fund, the communal marketing fund. So they have a
23 practice of doing it.

24 COMMISSION VICE CHAIRPERSON HARRIS: Mr. Fravel?

25 MR. FRAVEL: Craig Fravel, Del Mar.

1 You'll be happy to know that Jack and I agree
2 completely on this subject.

3 The bottom line here, I mean, these are
4 essentially commercial relationships. We're all big boys
5 and girls and we go out and make deals with ADW companies,
6 or out-of-state wagering facilities to commingle into our
7 wagering pools.

8 And the commercial terms under which we do those,
9 assuming they're honest and met honestly, and at arm's
10 length, you know, should be honored, I believe.

11 And I think the proper focus of the Board, which
12 is really where the Board went four or five years ago, was
13 in making sure that people who conducted business with
14 people in California, either by telephone or the internet,
15 were properly licensed to do that.

16 And that was the determination the Legislature
17 made when we passed the original ADW law, by setting up a
18 licensing scheme.

19 And those companies who are rightfully licensed
20 within this State, you know, are permitted to have rebates,
21 and I don't see anything wrong with that at all.

22 Now, we may want to demand a higher fee from them,
23 or a lower hub fee, or whatever commercial arrangements we
24 can make, but I agree with Jack, there's no point in us
25 trying to remake the business arrangements at this point.

1 COMMISSION VICE CHAIRPERSON HARRIS: So how would
2 you feel on our current rule, even though it sounds like
3 it's not really abided by, would you be in favor of amending
4 our current rule to be silent on rebates?

5 MR. FRAVEL: I would eliminate the rule entirely.
6 It has no future application or past application.

7 I mean, basically, the view that everybody took,
8 including the Board, was that the rule said you have to
9 place in your contract a prohibition on rebating, which
10 everybody did and everybody ignored it. It didn't say you
11 have to enforce the prohibition.

12 COMMISSION VICE CHAIRPERSON HARRIS: Well, that's
13 not really good government.

14 MR. FRAVEL: I mean, it's playing with words. But
15 the fact of the matter is it's happened for years.

16 And again, the Board went -- I mean, you were on
17 the Board at the time, John, we looked at this extensively
18 when Mr. Lictk was chairman.

19 And really what the Board did was they required
20 companies offshore, that were allowed to simulcast, and can
21 commingle entire pools, to sign affidavits that indicated
22 they weren't accepting wagers from California residents.

23 I don't know if the Board still requires those
24 kind of affidavits.

25 And I'm not talking about the legitimate ADW

1 companies, I'm talking about the rebate shops in Antigua or
2 St. Kitts. They were all required, as part of the simulcast
3 approvals, to enter into those kinds of undertakings.

4 And whether they abided by the -- and that's one
5 thing none of us really knows, whether they truly abided by
6 those or not.

7 And I think that's an area for the Board to direct
8 its attention, more so than the fact of whether there's
9 rebating going on.

10 Thank you.

11 COMMISSIONER CHOPER: How could we -- how should
12 the Board direct its attention to that?

13 MR. FRAVEL: Well, you have ways of doing it. I
14 mean, you can have people set up phantom accounts or, you
15 know, go to -- I mean, I'm not an investigatory type of
16 person, or a security person, but there are a lot more
17 intelligent people out there, than I am, about how to catch
18 people doing something they're saying they're not doing.
19 And you could try to open an account with them or --

20 COMMISSIONER CHOPER: The offshore providers have
21 signed agreements.

22 MR. FRAVEL: Every legitimate offshore provider,
23 if you take RGS for example, because they're probably the
24 largest -- well, maybe not, we've had a few others that have
25 moved a few players around lately.

1 But they have a contract with us, which our
2 horsemen approve, which provides for a certain percentage of
3 their handle to come back to us in the form of purses and
4 commissions.

5 There's a whole 'nother class of people out there,
6 who I would call -- and every ADW company has a contract
7 with us, as well, which the horsemen have to consent to and
8 you, ultimately, have to consent to those. So those are all
9 in one category.

10 COMMISSIONER CHOPER: Okay.

11 MR. FRAVEL: The second category is people who are
12 offshore somewhere, who are accepting wagers from residents
13 of California, or elsewhere, not commingling into our pools,
14 they have no authority to do what they're doing. It may not
15 be illegal because they could be just booking the bets, you
16 know. But many of those offer significant rebates.

17 Most of their management won't come into the
18 United States because a few of them have been put in
19 handcuffs when they landed. But those are -- that's a whole
20 different category of individuals.

21 But even with the legitimate offshores, I do think
22 it's incumbent upon the Board to exercise its regulatory
23 authority to figure out whether they're abiding by the terms
24 of those arrangements, that they're not taking bets from
25 people here, in California.

1 And I still support that particular restriction.

2 MR. COUTO: Drew Couto, Thoroughbred Owners of
3 California.

4 I'm in the unique position of agreeing with my
5 colleagues at the racetracks. We have, over the years,
6 given the prior direction of the Horse Racing Board, that
7 largely it was, I think, deferred to horsemen and to the
8 tracks to decide how those arrangements would be worked out.

9 We have included, in our consents, certain
10 conditions related, for example, to rebate shops, the legal
11 rebate shops offshore that they have certain minimum
12 thresholds to play, for players, and that the players be
13 non-California residents. There's a series of conditions
14 that are set by us and also by some of our track partners.

15 And we also came to recognize that when the CMC
16 was paying Golden State Rewards Network marketing incentives
17 to players, who played at certain levels, it was only fair
18 that the ADW companies be given similar freedom to pay
19 similar marketing incentives.

20 And it has been our understanding, and we'll go
21 back and look at it based on some of the concerns here, it
22 has been our understanding that that is sort of limited to
23 players who are playing at certain levels, as well, to get
24 those rebates.

25 Because if what we're talking about is rebates to

1 any player who comes up, what we're talking about is one
2 takeout rate for one group and another takeout rate for
3 another group.

4 But I think we have been -- we have enjoyed, at
5 least some aspects of our relationships with the ADW
6 companies, that we try and work together on these and other
7 issues to figure out what will incent people to play here.
8 And we think that's the best way to continue going is to
9 allow the parties to work out the commercial arrangements
10 and, hopefully, stimulate play, using Jack's term, stimulate
11 play on California signals.

12 COMMISSION VICE CHAIRPERSON HARRIS: So TOC would
13 be -- thus join the others in favoring, basically, repeal of
14 the rebate language?

15 MR. COUTO: How do I say we've all ignored it? We
16 haven't ignored it, but my recollection of, for example, one
17 prior Pari-Mutuel Committee meeting, was that we were
18 directed by then Board members and staff that it wasn't
19 going to be enforced by the Horse Racing Board and it was up
20 to the tracks and to the horsemen to deal with this.

21 So we have sort of ignored it, thinking that's
22 what we were to do, by the Horse Racing Board.

23 And it really doesn't have a legitimate function,
24 given the way in which we've conducted business over the
25 last five years.

1 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, I'd
2 agree. It's bothersome to me if we have rules that are not
3 really enforced, or abided by, I think it weakens government
4 in general to have things that are somewhat meaningless. So
5 I would think we should just repeal it, if that's the will
6 of the people.

7 But is there anyone here that feels that there is
8 validity in the rule? Any comments from anybody?

9 Any discussion by the Commissioners?

10 COMMISSIONER MOSS: Well, I think the -- I don't
11 know if this -- well, anyway, I think anything that stands
12 in the way of attracting business in any way, we have
13 to -- I think the best -- you know, if I could make a -- you
14 know, I would make a motion to repeal the rule, you know,
15 frankly.

16 COMMISSIONER ISRAEL: Second.

17 COMMISSIONER MOSS: And not stand in the way of
18 advancing the marketing interests of the industry.

19 COMMISSIONER ISRAEL: I'll second that motion.

20 COMMISSION VICE CHAIRPERSON HARRIS: Now, what
21 we'd do is put it out for comment for 45 days and -- I mean,
22 just to be a contrarian, I'll tell you what the other
23 argument is.

24 There is a theory that if I'm here this afternoon
25 and I decide to bet a hundred dollars to win on a horse,

1 it's going to cost me a hundred dollars.

2 But if I go someplace else, one of my
3 counterparts, somebody kind of like me, but not me, they
4 could bet a hundred dollars to win for \$95.

5 So it's not exactly a level playing field, but I
6 think that's kind of life, I guess, is part of it. But I
7 mean, there is an argument that --

8 COMMISSIONER MOSS: It's like buying a TV set.

9 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

10 COMMISSIONER MOSS: So it's all part of the same
11 thing. And we're also asked to increase wagering facilities
12 throughout the State, make it easier for people to make a
13 bet. And I don't see any need for this rule, myself.

14 COMMISSIONER ISRAEL: But, John, that's not
15 entirely the case anyway if -- let's just add a few zeros.
16 If you're going to bet a hundred thousand dollars on a horse
17 to win here, you will get -- and you do that on a regular
18 basis, they will track your play and you will get a rebate
19 from the racetrack.

20 COMMISSIONER MOSS: Yeah.

21 COMMISSION VICE CHAIRPERSON HARRIS: Possibly, but
22 it's not going to be five percent.

23 COMMISSIONER ISRAEL: Well, now you're just -- as
24 Churchill said, "now, we're negotiating." I mean, and
25 that's not our position.

1 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

2 COMMISSIONER ISRAEL: We've determined what it is
3 and we're negotiating.

4 COMMISSION VICE CHAIRPERSON HARRIS: Yeah. But
5 that's just a function of how much margin anyone has.

6 But, anyway, we've got a motion and a second to
7 put out, for 45 days comments, to effectively repeal 1950.1,
8 Rebates on Wagers.

9 Any other discussion by the Board?

10 COMMISSIONER MOSS: I think the only continuous
11 question is if it -- it should not affect purses in any way.
12 And as it's been mentioned, it doesn't. And so, therefore,
13 I would -- that's the only caveat I --

14 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, I think
15 that would be the problem is if somehow the rebate was not
16 agreed to by the parties that were being benefitted by the
17 handle. Where if the money rebating was not -- the
18 horsemen, and the tracks, or the ultimate beneficiaries, if
19 they didn't buy into the concept, but it looks like they do.

20 COMMISSIONER ISRAEL: TOC is protected because it
21 gets to sign off on every contract.

22 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

23 Okay, all in favor?

24 (Ayes.)

25 COMMISSION VICE CHAIRPERSON HARRIS: Opposed?

1 Okay, we're going to play golf here.

2 EXECUTIVE DIRECTOR BREED: I've got a handout.

3 COMMISSION VICE CHAIRPERSON HARRIS: Okay. This
4 next item is on the Alameda County Fair Golf Course dispute
5 on --

6 EXECUTIVE DIRECTOR BREED: Can you pass this down?

7 Mr. Chairman, this is a continuation of an item
8 that we've had on for a couple of months, which is presently
9 the Alameda County Fair has a waiver, for an extended period
10 of time, an exemption, permanent exemption, I guess, is the
11 correct form, to have a golf course in the infield of the
12 racetrack during training periods.

13 The California Thoroughbred Trainers Association
14 have asked us to remove that exemption, pending some sort of
15 arrangement, or pending some sort of mutually agreed to
16 redesign of the course, or remaintenance of the course, or a
17 refunction of the course.

18 About the last three months they've been in
19 negotiations. There's a letter here that came a couple of
20 days ago, from the Alameda County Fair.

21 I guess, basically, the Board's just waiting to
22 see if the two parties can come to some sort of agreement
23 and get on with their business.

24 So I think we ought to ask the two parties to come
25 forward and say if they've got an agreement.

1 MR. HALPERN: Ed Halpern, California Thoroughbred
2 Trainers. It appears that I'm the two parties today.

3 All I can say is that we're going on five or six
4 months here and very little has been done. But at least
5 they are now moving forward and have taken steps to bring in
6 an expert to determine exactly how to solve the problem.

7 And I suppose, realistically, we can't do much
8 more at this point than encourage them to move forward with
9 all due haste, before we suffer some significant injury that
10 we're all very sorry about.

11 So I would ask you to really -- I think all we can
12 do at this point is put this over for another month and hope
13 that they continue to work towards a solution.

14 COMMISSIONER ISRAEL: Ed, do you know anything
15 about this letter, which towards the end says, "at such time
16 as ball containment strategies are finalized, the racing
17 industry must be ready to step forward financially in
18 support of these requested changes."

19 Why would that be the racing industry?

20 MR. HALPERN: The golf course operators have,
21 throughout the course of this problem, felt that they have
22 no responsibility to the racing industry or to the training
23 facility to make their golf course a safe operation, and
24 feel that it is either the obligation of the industry or the
25 obligation of Pleasanton to pay for whatever steps are

1 necessary to make the golfing operation safe.

2 Obviously, we have a different view of that and
3 I'm comfortable with our view of that. But it remains to
4 be --

5 COMMISSIONER CHOPER: A difference in the
6 liability to the operator.

7 MR. HALPERN: I'm sorry?

8 COMMISSIONER CHOPER: Differences to the liability
9 to the operator, if someone gets beaned by one of those golf
10 balls.

11 MR. HALPERN: Two differences. One as to the
12 liability of the operator. And, derivatively thereof, the
13 responsibility of who should pay for taking steps to make
14 sure that accidents are avoided.

15 And they feel that it's either our responsibility,
16 as an industry, or Pleasanton's responsibility. And we
17 obviously have a different view.

18 But I think we have to hold off on that decision
19 until we see what the cost is of these actions that are
20 necessary.

21 COMMISSIONER CHOPER: But they know they're going
22 to be asked to be included in the discussions, I take it?

23 MR. HALPERN: I think they have that feeling.

24 COMMISSIONER CHOPER: Okay.

25 COMMISSION VICE CHAIRPERSON HARRIS: Is there any

1 way we can quantify how many golf balls end up on the track?
2 Because that's one of my concerns is just these golf balls
3 on the track while the horses are training, if they step on
4 one, they could be injured.

5 I don't know if that's a very, very rare
6 occurrence or if it's just kind of an every-day happening,
7 you're going to have golf balls on the track.

8 MR. HALPERN: No, it's a fairly common experience
9 of coming out in the morning and finding a number of golf
10 balls on the track. And the outriders do make a round
11 before training starts, but that's no insurance.

12 The Pleasanton has taken the action of placing, as
13 you'll see in that letter, if you haven't seen it yet, they
14 placed observers out on the infield for three weeks, to
15 watch where, when, and how the balls are ending up on the
16 track.

17 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

18 MR. HALPERN: They've now finished that. I have
19 not seen the results of it, but they believe they now have a
20 handle on where the balls are, and how they're getting
21 there, and how many.

22 But I can't report the results of that to you
23 because they haven't forwarded that to me, yet.

24 COMMISSIONER MOSS: Has there been any study in
25 the screening of anything, I mean, as far as what screening

1 opportunities exist?

2 MR. HALPERN: That's what we've been looking at
3 and they have finally brought in an expert who is in the
4 business of screening for protection purposes. And they're
5 supposed to be reviewing Pleasanton's figures right now to
6 determine exactly where screens should be placed and how
7 much that would cost.

8 COMMISSION VICE CHAIRPERSON HARRIS: Is someone
9 here from Alameda County, who would like to comment?

10 MR. HALPERN: Yeah, Rick Pickering's here.

11 MR. PICKERING: Good morning, Rick Pickering, CEO,
12 Alameda County Agricultural Fair Association, nonprofit
13 501(c)(3) company managing the fairgrounds on behalf of the
14 County of Alameda.

15 Is there a specific question?

16 COMMISSION CHAIRPERSON HARRIS: Well, no, I didn't
17 know if there was any additional information or whatever,
18 but it sounds like we're --

19 COMMISSIONER CHOPER: I guess the question is how
20 fast is this going to be done? That is, the study
21 completed, the estimate for any improvements that have to be
22 made and, ultimately, who's going to pay for it? That may
23 take longer.

24 MR. PICKERING: Yeah, the last part of your
25 question is still up for debate, who's paying for what.

1 COMMISSIONER CHOPER: Yeah, but how long before it
2 gets fixed up?

3 MR. PICKERING: I believe within the next week and
4 a half we should have stamped plans from a licensed
5 architect, whose specialty is golf ball containment, and
6 then we can take those plans and get a price on them.

7 And then in working with the trainers that are
8 actually in Pleasanton, conducting training day to day,
9 they've given us some input on what they believe would be
10 the higher priority areas to address early on, as opposed to
11 some that would be a less priority.

12 COMMISSIONER CHOPER: Uh-hum. So you would guess,
13 if you had to guess, you don't have to, but 45 to 60 days
14 that at least the plans would be laid and be partially
15 executed?

16 MR. PICKERING: Well, I wouldn't want anyone in
17 this room to believe that we have not been making progress,
18 doing other things to make it safe at the same time.

19 COMMISSIONER CHOPER: I understand.

20 MR. PICKERING: So we've been doing other
21 remediation efforts, too, parallel to this effort. So I am
22 hopeful that as soon as we have those in hand, we can sit
23 down and talk about the funding mechanism.

24 And I apologize that people have been at this
25 podium recreating history. Pleasanton was asked to absorb

1 the horses from Bay Meadows.

2 COMMISSIONER CHOPER: I understand.

3 MR. PICKERING: Yeah, I understand you understand
4 that. But we are what we are, we are a fairgrounds. And
5 we're willing to continue to work with the industry. We're
6 accounting for roughly 20 percent of the starts at Golden
7 Gate Fields.

8 The industry came to us and said help us, and so
9 I'm disappointed that if anybody comes in front of this
10 Board and says, now that you're there, we want you to pay
11 for everything that you're doing to help us.

12 So I'm appreciative of other people in the
13 industry that have come forward and said we can solve this
14 problem together.

15 COMMISSION CHAIRPERSON HARRIS: It might be
16 helpful if we could get -- I know you're being paid for the
17 stabling, and I think the counter argument is that just
18 covers costs. But just for our benefit, could we get a
19 break down of how much money you get for stabling and where
20 all that goes now, you know, what your costs to operate on a
21 daily basis are?

22 MR. PICKERING: Absolutely. The Vanning and
23 Stabling Committee negotiated those items between CARF, TOC
24 and Golden Gate Fields. Pleasanton does not have a contract
25 with the Vanning and Stabling Committee. CARF does. But we

1 can provide you with all that data.

2 In fact, my understanding is TOC is conducting a
3 statewide study of vanning and stabling funds in the north
4 and the south, the number of starters, the number of horses.
5 And I think that study will show that Pleasanton's
6 accounting for a significant amount of horses starting at a
7 much reduced price, compared to the other tracks.

8 COMMISSIONER CHOPER: I take it you were the
9 contracting party with the golf association?

10 MR. PICKERING: That is correct.

11 COMMISSIONER CHOPER: So I guess I would just
12 encourage you to, you know, start talking to them, and say,
13 hey, they have potential liability here and they got to help
14 pay for it.

15 Now, how much they've got to pay and how much
16 somebody else has got to pay is a different issue.

17 But I take it they're on notice and the faster
18 this gets done, the cheaper it's going to be for everybody,
19 including them.

20 MR. PICKERING: Thank you.

21 COMMISSIONER CHOPER: There are plenty of lawyers
22 in Alameda County that got nothing to do.

23 MR. PICKERING: Some of them are Cal graduates, I
24 understand.

25 COMMISSIONER CHOPER: Yeah, some of them, that's

1 right.

2 (Laughter.)

3 MR. HAIRE: Darrell Haire, Western Regional
4 Manager of the Jockeys Guild.

5 I just hope this gets resolved soon because this
6 is a safety issue. And I've spoken to riders, plenty of
7 riders that have been there for years and these balls are
8 out there in the mornings.

9 I know they make an effort in the mornings to
10 clear them, but it's dark and they can't see them all. And
11 I just hope this gets resolved before something, you know,
12 drastically -- or someone gets hurt real bad, I hope this
13 gets resolved.

14 COMMISSION CHAIRPERSON HARRIS: Yeah, I think
15 that's one of my main concerns is we are looked at as the
16 licensing agency and should be doing due diligence on
17 training facilities being effectively safe. And if they're
18 not, then we shouldn't license them as training facilities.

19 MR. COUTO: Drew Couto, Thoroughbred Owners of
20 California.

21 From TOC's perspective, I'd like to commend Rick,
22 in particular. He has made a great effort to keep us
23 informed through this process. And in our opinion, he's
24 been diligent in trying to work out a solution.

25 You know, this has had a permanent exemption. We

1 understood it to be permanent.

2 In the north there was some urgency to -- not just
3 urgency, but we needed a plan, Pleasanton stepped forward.
4 We came to them and we said we need help.

5 We looked at the fact that this had been in
6 existence for quite a while, had been relatively claim free.
7 I was not aware of any claims there.

8 And since it has been raised as an issue, I will
9 just support the Alameda County Fair, and Rick in
10 particular, about taking it seriously and trying to get
11 something done. And we have faith that something will get
12 done.

13 And eventually, as he's pointed out, it may
14 involve some expenditures and we'll all have to figure out a
15 way to do that.

16 But, again, I commend them as keeping us in the
17 loop and working hard to resolve it. So thanks.

18 COMMISSION CHAIRPERSON HARRIS: The "permanent,"
19 as I understand it, is not really applicable to a rule that
20 we make. I mean, can you -- permanent, does that have a
21 higher standing than just another rule? I mean, all of our
22 rules are permanent until changed, I would presume?

23 STAFF COUNSEL MILLER: Yes.

24 COMMISSION CHAIRPERSON HARRIS: Yeah, so I mean
25 the -- so I think, you know, regardless of the merits of the

1 difference argument, I don't think we should get too hung up
2 on the term "permanent."

3 STAFF COUNSEL MILLER: Yeah, one thing that really
4 hasn't been discussed is what's happened to the golf ball
5 since 1994.

6 COMMISSION CHAIRPERSON HARRIS: Oh, really?

7 STAFF COUNSEL MILLER: Yeah, golf balls go farther
8 today. And equipment is different, equipment is better.

9 Golf balls are aeronomically --

10 COMMISSIONER ISRAEL: Aerodynamically.

11 COMMISSION CHAIRPERSON HARRIS: Aerodynamically.

12 STAFF COUNSEL MILLER: Thank you. Aerodynamically
13 more --

14 COMMISSIONER ISRAEL: Their dimples are different.

15 STAFF COUNSEL MILLER: Their dimples are different
16 and they go farther.

17 So it was something that was not --

18 MR. PICKERING: Rick Pickering, again, on behalf
19 of the Alameda County Agricultural Fair Association.

20 We recognize that golfing has changed since the
21 1970s. Racing has changed since the 1070s. We have long
22 recommended that we would bring in an outside engineer who
23 could put his licensed stamp on whatever the recommended and
24 screening is versus you or I designing it, and installing
25 it, and somebody becomes injured and then we're all in

1 another different level of liability.

2 So the fact that we've hired the engineer, we've
3 collected the data, he's doing computer-generated trajectory
4 studies so that he can design to address those types of
5 issues, such as different improvements in the industry.

6 Thank you for bringing it to my attention,
7 appreciate it.

8 MR. GOODRICH: Mr. Chairman, Cliff Goodrich, of
9 Fairplex.

10 The Attorney General's comment, there's several
11 golfers in the audience, and if there's a golf ball that
12 goes farther, we're looking for it. So please see me after
13 the meeting.

14 (Laughter.)

15 EXECUTIVE DIRECTOR BREED: He's not an Attorney
16 General, don't give him that yet.

17 COMMISSION CHAIRPERSON HARRIS: He might be a
18 golfer.

19 Well, I think we've probably discussed this
20 enough, but I think we need to keep revisiting it and see
21 what's occurring to resolve it.

22 COMMISSIONER MOSS: Well, it's a question of who's
23 the ball containment designer and who's going to pay for it.
24 So that would be between, I guess, Alameda County and the
25 TOC. So let's see what's up. And we should try to get this

1 resolved as soon as we can. Thank you.

2 COMMISSION CHAIRPERSON HARRIS: Yeah. But in a
3 perfect world you could say, well, why don't we just not
4 train in Alameda County, if we had some other place to go to
5 that was comparable, but that's -- we don't live in a
6 perfect world.

7 And the next item is a report from the Equine
8 Medical Director regarding medication and animal welfare
9 issues.

10 EQUINE MEDICAL DIRECTOR ARTHUR: Thank you, Mr.
11 Chairman.

12 Just a little comment on the last item. I have
13 seen three horses, in my 33 years of practice, that had
14 fractured coffin bones from stepping on golf balls. It is a
15 dangerous situation. I don't know if that's ever happened
16 here.

17 But anyway, moving on. We actually have some very
18 good news. With all the brouhaha at the beginning of the
19 Santa Anita meet, we have had one racing fatality since
20 December 31st, on this surface.

21 And even better, in Northern California we have
22 not had a racing fatality since the meet started on 12/26,
23 the day after Christmas.

24 And I only went back through he records to 2004,
25 but I can't find a month anywhere, at a major racing track

1 with dirt, that had had no fatalities. And, of course,
2 these were on either dirt or turf. So that's very good
3 news.

4 And I have done the calculations for synthetic
5 surfaces through the end of the year, and they're running
6 about two-thirds of the racing fatality rate as dirt, when
7 you compare the same surface to the same dirt surface, to
8 the same synthetic surface.

9 Obviously, or apparently the rain or whatever it
10 was in the last few months, maintenance changes, or other
11 protocols have certainly solved some of the problems.

12 We have had training fatalities, probably about
13 the same rate that we typically do.

14 But I think everybody needs to realize that we run
15 eight facilities that have horses on them at any one time.

16 We have probably, and this is a number we need to
17 get a better handle of, somewhere between five and seven
18 thousand horses at a CHRB facility somewhere in the State.

19 We've had two horses run into each other. One
20 broke its thoracic vertebra, the other horse fractured a
21 pelvis.

22 We had two loose horses, at one facility, run into
23 a fence, one with a rider, one without, that resulted in
24 fatalities.

25 We've had two horses die recovering from

1 anesthesia, one an anesthetic death.

2 We had one horse galloping that ruptured a
3 mesenteric artery.

4 The fact is we have a very robust program and we
5 know why our horses die, and can evaluate it, and put
6 everything in perspective.

7 So anyway, that's the good news. So I think
8 things are moving along quite well. Hopefully, we'll be
9 able to maintain that success as the weather dries out and
10 the heat comes back.

11 We've been working on several issues. I've been
12 working with the University of California trying to get more
13 timely analysis and reports from our necropsy data.

14 As I think all of you know, we've worked very hard
15 trying to make sure the data in both the UC Davis and at the
16 CHRB is accurate.

17 Prior to July 1st, of 2007, there were a lot of
18 holes in the data, but we've cleaned that up quite well and
19 I think that's moving along fine.

20 We had issues. We met yesterday with the
21 Executive Director, going over ideas about monitoring
22 injuries more thoroughly, from the CHRB's perspective. And
23 I think when the time's appropriate and we actually ferret
24 out how we're going to do this, we can be reporting to the
25 Board exactly how that's moving along.

1 At the next Medication meeting, there's been some
2 issues with horses on the vet's lists. We've had a couple
3 of fatalities with horses that were on the vet's list. We
4 need to evaluate that and make sure that horsemen know what
5 we expect under those circumstances.

6 And we also, probably will be filing a whipping
7 complaint here, at Santa Anita. And we need the jocks to
8 understand that our rules are actually going to be enforced,
9 in terms of whipping violations.

10 The anabolic -- moving on to medication -- does
11 anybody have any questions about the data I just mentioned?

12 COMMISSION CHAIRPERSON HARRIS: Any questions?

13 EQUINE MEDICAL DIRECTOR ARTHUR: Moving on to the
14 medication issue, the anabolic steroid situation has, I
15 think, gone better than any one of us, anybody had expected.

16 The Racing Medication and Testing Consortium has
17 just completed studies that where administrations were done
18 in Florida, and the samples analyzed at both the University
19 of Florida, and Dr. Stanley's laboratory here, at UC Davis.
20 So we are prepared to do blood level regulations.

21 And as I think most of you remember, we actually
22 designed our rule so that we could move to that, when
23 appropriate, on a national basis.

24 The new penalty guidelines are actually working
25 quite well. The non-steroidal anti-inflammatory violations,

1 that's bute, flunixin and ketofin, appear to be down.

2 And if you remember, those penalty guidelines are
3 very costly to trainers, even on a first violation. You get
4 to the second and third and it gets to be a very, very
5 expensive mistake.

6 And trainers are starting to realize that. We
7 have not had a clenbuterol violation in Southern California
8 since the fall of '07.

9 We haven't had a TCO2 violation in Northern
10 California since June of '07, and we had two in Southern
11 California in 2008. And that's probably out of, both north
12 and south, well over 40,000 samples.

13 I think the efforts we've made to be tough, and
14 fair, and consistent are paying off and I think we're moving
15 in the right direction.

16 COMMISSION CHAIRPERSON HARRIS: Rick, one area
17 that you might comment on is the frozen samples, there's a
18 national effort to take a look at freezing samples. I think
19 we've got a program going now, in California. Could you
20 explain that?

21 EQUINE MEDICAL DIRECTOR ARTHUR: Yes, we
22 actually -- and part of the increased budget for out-of-
23 competition testing, part of that budget was for freezing of
24 samples, and we've been doing that for -- Dr. Stanley's in
25 the audience, maybe he can tell us, for about a yeah?

1 DR. STANLEY: Yeah.

2 COMMISSION CHAIRPERSON HARRIS: Well, you might
3 explain the rationale of why you would freeze a sample?

4 EQUINE MEDICAL DIRECTOR ARTHUR: Sure. Well, the
5 rationale, obviously, is there's a couple of ways you can
6 use frozen samples. One of them is to do epidemiological
7 studies to find out different sort of issues. But the real,
8 real impetus is if a test is developed, let's say for a
9 human growth hormone, which I think would probably be one of
10 our target drugs going forward, there is not a good test for
11 human growth hormone today.

12 We have those samples, we can go back,
13 retroactively, and test those samples. Very similar to what
14 the Olympics do.

15 We are limited in California on what sort of
16 regulatory action we can take, but let's say trainer X comes
17 up with a human growth hormone positive, we can go back and
18 pull out all of his samples, and if we find 12 other of
19 those samples, with the next test, that have human growth
20 hormone, it's going to be very difficult for that trainer to
21 say, well, golly, I don't know where this came from. He's
22 going to have 12 to have to explain where they came from.
23 So that's what the impetus is.

24 The whole goal of drug testing is a deterrent.
25 And what we want is if people are playing by the rules, we

1 want them to feel comfortable that they're not going to get
2 wrapped up in the violation.

3 But if they're bending the rules, our goal is to
4 not let them sleep well at night.

5 In knowing we have those frozen samples, that we
6 can retroactively test, is a deterrent, and a relatively
7 inexpensive one.

8 And the good news for California, in fact Dr.
9 Stanley and I will be on a conference call tomorrow, is it
10 appears as if the Jockey Club is going to contribute to the
11 cost of doing some of that retroactive testing. It's cheap
12 to store them. Taking them out and testing them again gets
13 to be somewhat expensive, you're probably talking about a
14 couple of hundred dollars a sample, I would think.

15 So, anyway, that's what that program is and we
16 probably have 15, 20 thousand samples frozen now. Scott,
17 Dr. Stanley?

18 DR. STANLEY: Yeah, Scott Stanley, UC Davis. We
19 probably have closer to 25,000. It's been over a year and a
20 half that we've been storing those samples. We are
21 targeting two years to maintain them, so we won't start
22 throwing samples out or going through the ones that we've
23 kept at least until June -- sorry, July of this next year,
24 before anything's two years of age, so we can go back for
25 two years.

1 In addition to, as Dr. Arthur said, the growth
2 hormone issue, we could go back and look at something like
3 anabolic steroids. Some of the anabolic steroids that
4 haven't been of high priority because we were regulating
5 nandrolone, testosterone, and stanozolol.

6 If there was a concern about something, you may
7 remember the THG, the one that was used by the -- developed
8 by the Balco labs. There's other synthetic steroids that
9 can come along and we can go back and look at those other
10 types of steroids in the future, too, if there's a new test
11 developed, as well as growth hormone, or other substances
12 that may be found in other jurisdictions, or other
13 countries.

14 If we can associate that to a particular trainer
15 activity, the Horse Racing Board can notify us, we can pull
16 samples and retrospectively test those for a variety of
17 different substances.

18 And it gives a very strong deterrent, as Dr.
19 Arthur already stated, to those people that may be thinking
20 about doing something, and deterrent is our strongest ally.

21 COMMISSIONER ISRAEL: Well, what action -- you go
22 back 18 months, can we take, for instance, in a stakes race,
23 or God forbid, a Breeders' Cup race where you turn up a
24 positive and a purse has been paid on the order of millions
25 of dollars?

1 EQUINE MEDICAL DIRECTOR ARTHUR: You would be very
2 hard-pressed to take specific regulatory action. Because
3 after 21 days, it becomes no longer a trainer insurer rule,
4 we would actually have to prove that the trainer was
5 responsible for the violation.

6 So it would take a much more rigorous
7 investigation than we do at this particular date.

8 If you found one, you wouldn't be able to do
9 anything. If you found a dozen, you might be able to
10 develop a case.

11 So, you know, in terms of actually using frozen
12 samples for specific regulatory action will be difficult
13 without a current, pending action.

14 DR. STANLEY: Commissioner Israel, one of the true
15 benefits though is in the case that we have somebody with an
16 ongoing issue that we find, that they've been using a drug,
17 if we go back historically and represent that they've been
18 using that for some period of time, it allows us to use the
19 mitigating circumstance rule. And in this case not provide
20 leniency, but potentially go with the strongest penalty
21 because there's mitigating evidence that they've been using
22 this for some period of time.

23 EQUINE MEDICAL DIRECTOR ARTHUR: Actually, right
24 where it's aggravating.

25 DR. STANLEY: I'm sorry.

1 COMMISSIONER ISRAEL: There is a chain of custody
2 and --

3 DR. STANLEY: Absolutely.

4 COMMISSIONER ISRAEL: Okay. So but the aggrieved
5 party isn't necessary the State of California, it's the
6 owner and the trainer who finished, and the jockey who
7 finished second and were denied their proper purse money.
8 And how are they -- what do we do about that?

9 DR. STANLEY: Well, the current rule doesn't
10 really afford us the legality to go back past the 21-day
11 period. If we don't notify them, then the California rule
12 makes it very difficult for us to prosecute somebody over a
13 long period, you know, historically back over 18 months or a
14 year.

15 EQUINE MEDICAL DIRECTOR ARTHUR: Yeah, and the
16 other value of it would be epidemiological, to find out how
17 frequently a drug had been used. And you may even analyze
18 the samples anonymously in that particular situation.

19 The real key for this is having those samples
20 pending the development of new tests.

21 And I think most of us, who look at this issue,
22 agree that human growth hormone is going to be a target.
23 Possibly, if additional tests are developed, for EPO.

24 And we do, we actually call some positives on some
25 drugs in California that aren't called elsewhere. We're

1 talking about gabapentin that's not -- hasn't been called
2 elsewhere.

3 We've had a couple in California, heptominol we
4 just called in Northern, at Cal-Expo, drugs that they don't
5 see elsewhere.

6 So we have a very, very rigorous drug testing
7 system and we can actually go back, as those tests are
8 developed and see how big a problem it was, if we don't get
9 it solved very quickly.

10 But the real -- the real value of a frozen sample
11 is the deterrent. The fact that you're always going to be
12 subject to scrutiny if you're using an elicited product.

13 DR. STANLEY: And I think the other evidence with
14 that is the RMTC and the Jockey Club stepping up and wanting
15 to do a similar program, and using some of what we've been
16 doing as a guideline. It just kind of validates what we've
17 done in California, now, for a year and a half.

18 COMMISSIONER MOSS: So you see other -- let's say,
19 EPO derivatives, you can check those out and you can find
20 them, basically?

21 EQUINE MEDICAL DIRECTOR ARTHUR: Theoretically.
22 We do EPO testing, now. But frankly, and I don't want to
23 talk about specifics, we have a very narrow window and
24 that's why we have to do competition testing. And, you
25 know, hopefully, those tests will get better.

1 It is not -- it's a difficult test to do in
2 humans, it's a difficult test to do on horses. Actually,
3 it's a little easier in horses, for a couple of reasons,
4 than some drugs, for a couple of reasons. But we are doing
5 that.

6 And quite honestly, I think we have as straight a
7 game as there is in horseracing, in California, and I'm
8 quite pleased with how things are working.

9 COMMISSION CHAIRPERSON HARRIS: Why don't we take
10 just a real short break. Our timing's going pretty well,
11 but let's take about a five- or ten-minute break and get
12 back.

13 (Off the record.)

14 COMMISSION VICE CHAIRPERSON HARRIS: We'll call
15 the meeting back to order, everyone's here.

16 The next item on the agenda is a report from the
17 Executive Director, and discussion, regarding the status of
18 dedicated funds under the jurisdiction of the Board and
19 possible alternatives.

20 EXECUTIVE DIRECTOR BREED: Thank you, Mr.
21 Chairman.

22 Up until about a week ago I had a nice little
23 speech prepared, and showing you all the great things that
24 we've done at the California Horse Racing Board over the
25 last year.

1 But then in the dark of the night, and the
2 skullduggery of Sacramento, this group of guys got together
3 and completely redid the whole horse racing law.

4 And so it's a different game now. And what I'd
5 like to do, for the benefit of the Board, is to kind of go
6 through some of these funds that were kind of unfinished
7 business when I came on board, and kind of what we've done
8 with them.

9 If you look at 7.1 in your packet there, and then
10 we'll get to the new legislation in a minute. I'm sure
11 there's a lot of -- sure there's going to be a lot of talk
12 about that.

13 On 7.1 this is what we call the section of the
14 Code which was repealed, which is 19616.51. The section of
15 the Code that was repealed by the new law, that sets forth a
16 requirement of \$40 million. And if the license fees, as
17 amended, does not reach that \$40 million, then the so-called
18 shortfall is to be made up by racing associations, purses,
19 and also breeder's awards, on some sort of pro rata basis.

20 We actually, finally, after some time of
21 negotiations with the industry, came up with a model or an
22 amount that each one of the -- each one of the organizations
23 would owe, which is on the back, 7.2, for the year 2007.
24 We actually put together a bill.

25 By the way, on the 7.1, it shows you where these

1 amounts -- what we considered as license fees.

2 Then on 7.2, it shows the amounts we projected to
3 be owed by the various entities, associations, et cetera.

4 After we sent out the bill, we got a letter back
5 from a law firm, representing the various associations that
6 I included on the front page, Hollywood Park, Oak Tree, Bay
7 Meadows. I think Del Mar is in there, too, I don't know.
8 But -- two Hollywoods, I'm sorry.

9 So basically this letter says that our assumptions
10 are incorrect and that in fact they don't owe any money at
11 all.

12 COMMISSION VICE CHAIRPERSON HARRIS: For '07.

13 EXECUTIVE DIRECTOR BREED: For '07, yeah.

14 And so we're at a point right now where basically
15 it's our intention just to turn this over to the Attorney
16 General and let them make a decision in some form or the
17 other.

18 Counsel, do you have anything to day on that?

19 STAFF COUNSEL MILLER: I don't.

20 EXECUTIVE DIRECTOR BREED: Okay. So then they
21 passed the law. Then they passed this SB 16, which
22 completely repeals that Act.

23 So as far as you folks owing any money to the
24 fairs for '08, I have no idea where that's going. I am
25 completely -- am completely -- well, it's because basically

1 all we are, really, is a bill collector. We don't get any
2 of the money.

3 And it's an attempt collect the money from the
4 associations, pursuant to the law, for the various fairs. I
5 mean, for the fairs.

6 So that's where that particular fund is.
7 Hopefully, it will go away now that the section of the
8 Code's been repealed.

9 Any questions on that?

10 COMMISSION VICE CHAIRPERSON HARRIS: On the 2007
11 issue, the letter from the attorneys representing some of
12 the tracks, it did seem to have merit to me that you
13 couldn't pass a bill in '08 that effectively imposed fees
14 for '07.

15 But I guess is that what we're going to ask the
16 Attorney General, to come up with their opinion on that?

17 EXECUTIVE DIRECTOR BREED: Yeah, I think that's
18 fair.

19 COMMISSION VICE CHAIRPERSON HARRIS: But, I mean,
20 we're not really defending that. I think what we need is
21 just an opinion, more than saying how do you defend, you
22 know, rather than a counter argument.

23 EXECUTIVE DIRECTOR BREED: Yeah, if this is right,
24 I mean if this letter's right, and their attorney is right,
25 then it's fine with us. And then if the Attorney General

1 agrees with it, we go forward.

2 COMMISSIONER CHOPER: Their point is not so much
3 that they can't do it, is that they haven't done it. That
4 is to say the statute was enacted after the year ended and,
5 unless they say otherwise, it shouldn't be retroactive to
6 the prior year, which I think is a pretty good argument.

7 EXECUTIVE DIRECTOR BREED: Yeah.

8 COMMISSIONER MOSS: Aren't they returning the 32
9 million to us at some point?

10 EXECUTIVE DIRECTOR BREED: Yeah, I'm going to talk
11 about that right now, yeah.

12 COMMISSIONER MOSS: Okay.

13 EXECUTIVE DIRECTOR BREED: The next fund is on
14 page 7.10. This is a Jockey Retirement Fund.

15 COMMISSIONER ISRAEL: It's 7 what?

16 EXECUTIVE DIRECTOR BREED: 7-10.

17 COMMISSIONER ISRAEL: Oh, 10.

18 EXECUTIVE DIRECTOR BREED: Yeah. This is the
19 Jockey Retirement Fund. This fund has been -- everybody is
20 pretty well paid up on this fund. We're ready to -- if
21 counsel and Barry Broad would like to make a couple of
22 comments on this fund, I'd appreciate it.

23 Because we made some move on this to get together.
24 It's our responsibility, as the Horse Racing Board, to
25 retain the money and then also to put together a program of

1 retirement for retired jockeys.

2 MR. BROAD: Barry Broad, on behalf of the Jockeys'
3 Guild.

4 The statute requires that the Horse Racing Board
5 and the Jockeys' Guild jointly manage this pension fund.
6 And where we are right now is that we have recently
7 executed -- the Board executed an agreement with a law firm
8 that has that experience putting together another, similar
9 type of fund for boxers in California.

10 And some of the same legal issues that affect
11 jockeys affect boxers. That is that they're treated as
12 independent contractors.

13 There are some little tricky issues, in terms of
14 taxation and so forth, some of which we will be taking up
15 with the new Secretary of Labor. Who, fortunately, happens
16 to be a good friend.

17 So we are, in terms of trying to make sure that
18 the money that's put in this fund is not taxable to the
19 jockeys until it's taken out. You don't want to have a
20 pension fund in which you have to pay taxes every year on
21 the contributions, but you don't get to see them -- you
22 don't get to see any income for 30 years or whatever.

23 After we get these initial structural issues taken
24 care of, we will then have to design the actual benefit
25 plan. And I think what we'll then do is look at how much

1 money we have, how much we're projected to have.

2 There's a little bit of information in the statute
3 that talks about what it takes to vest, but we don't really
4 have any information.

5 We have to figure out what makes sense as to like
6 when you can actually take the money out.

7 It is supposed to be a defined contribution
8 account. That means every licensed jockey will have an
9 account. Not all of them will vest, because you have to
10 race a certain number of races in your career to vest.

11 STAFF COUNSEL MILLER: In California.

12 MR. BROAD: In California. So there will be a
13 significant number of jockeys, who really don't race very
14 much, who will have contributions made for them, that do not
15 vest.

16 So that money, we have to figure out how that
17 money will be redistributed within the pension plan, and
18 invest it, and we have to make the investment decisions and
19 all that.

20 I will say this, because the money was just
21 sitting for the last year, this Jockey Pension Fund is the
22 most well managed pension fund in the United States of
23 America, maybe the world.

24 (Laughter.)

25 MR. BROAD: So in its first year it made whatever

1 it made, two percent, and which is a fabulous return, given
2 where everybody else is.

3 So I'd like to thank -- we should all ourselves
4 for our -- our amazing genius at moving slower than we
5 probably should have. Thank you.

6 COMMISSIONER ISRAEL: Barry, isn't there a
7 reasonable model for you to work from in the WGA, the SAG
8 after, and the DGA funds. All writers, actors, and
9 directors are independent contractors, they've been
10 operating pension funds in California for at least 50 years
11 each.

12 MR. BROAD: Right. There is -- here's the one
13 problem, which is what we have to take up with the
14 Department of Labor. For many, many years, the Jockeys'
15 Guild was considered by the Department of Labor a labor
16 organization.

17 During the Bush presidency, in one of the many,
18 but more minor insults to organized labor that occurred,
19 somebody at Churchill Downs got a hold of somebody in
20 Congress, who got a hold of somebody who happened to be the
21 wife of the senior of the Republican Leader of the Senate,
22 who happened to be the Secretary of Labor, Elain Chow, who
23 happened to suddenly write an opinion that says, oh, the
24 Jockeys' Guild is not a labor organization.

25 The purpose of that was to affect its -- at least

1 they thought, to affect its ability to strike.

2 But the unintended consequence of that particular
3 wonderful moment in history was that it raises the
4 question -- a labor organization that sponsors a retirement
5 plan has an exemption, a tax exemption based on ARISA.

6 The WGA, SAG, all those guys are considered labor
7 organizations.

8 So we have to go to the Secretary of Labor and
9 turn that little thing around.

10 COMMISSIONER ISRAEL: So Elise, I think, would be
11 amenable to that, no?

12 MR. BROAD: Well, I'm certainly banking on that
13 change. You know, we're all for change.

14 Okay, thank you.

15 COMMISSIONER ISRAEL: Thanks.

16 EXECUTIVE DIRECTOR BREED: Thank you, Barry.

17 Did you have anything to add?

18 STAFF COUNSEL MILLER: Well, just that the statute
19 provided that it's 1,250 races by a jockey, in California.
20 The plan, for those that retire after January 1, 2009, and
21 the question -- one of the questions is what is meant by the
22 word retire?

23 However, we are implementing the defined
24 contribution pension plan. We have -- the Board, through a
25 contract, initial contract, has retained a Folsom,

1 California law firm of Chung, Ruthenberg & Long, and these
2 are the people that have worked with the Department of
3 Consumer Affairs with regards to the boxers' pension plan
4 that underwent, with their assistance, some major revisions.

5 Also, these are the people that worked with the
6 blind operators of vending kiosks in State buildings, to set
7 up a pension plan for them.

8 So they're well qualified for this and we're
9 working on putting this thing together with the Jockeys'
10 Guild.

11 EXECUTIVE DIRECTOR BREED: Thank you.

12 Any questions?

13 The next one is on page 7-12. This is a section
14 of the code that makes a deduction and a distribution for
15 the purposes of -- this is another one that Barry Broad put
16 in the codes at some point in time, I think.

17 Which, first, the Department of Industrial
18 Relations is to cover costs associated with audits, with
19 their audits.

20 What has happened -- and then what is left over
21 from this process goes to an organization, designated by the
22 racing association or fair to augment a compulsive gambling
23 prevention program.

24 Down at the bottom of the page you see how much
25 have gone into it, those who have paid into the fund. On

1 the following page, you're shown how much has gone into the
2 fund in total.

3 This money's just been sitting there and has not
4 -- nothing has really happened to it.

5 The Department of Industrial Relations, we have
6 notified them on various occasions, over the last year.
7 They claim they have made some audits and are in the process
8 of giving us a bill.

9 We will then, once we get that bill, pay that
10 bill, we will then distribute the remaining amount to these
11 organizations that have been designated by the associations
12 and fairs.

13 COMMISSION VICE CHAIRPERSON HARRIS: Well, are
14 there certain organizations that are in mind? Or I don't
15 understand on the compulsive gambling, which I think racing
16 doesn't have that many members of that cadre as a lot of
17 forms of gambling. But it seems like there's a lot of money
18 here, looking for some place to be spent, and I'm wondering
19 if that's the best place to spend it.

20 EXECUTIVE DIRECTOR BREED: Well, that's what the
21 law says.

22 And here, again, most of these organizations, like
23 the Winners Foundation, the Winners Foundation does a
24 multitude of things, one of which is compulsive gambling.
25 And they are one of the organizations that have been

1 designated by the associations.

2 COMMISSION VICE CHAIRPERSON HARRIS: That's
3 probably all right, if they could be -- if all of the funds
4 don't have to go to one particular type of addiction. Like
5 the Winners Foundation or some of these others have -- you
6 know, also serve a lot of other social problems.

7 EXECUTIVE DIRECTOR BREED: Right.

8 COMMISSION VICE CHAIRPERSON HARRIS: I'd hate to
9 see it have to be specialized just on gambling.

10 EXECUTIVE DIRECTOR BREED: Well, most of us that
11 have addictive problems have multitudes of addictions, and
12 our social welfare can be addressed not only from one point
13 of view, but from a multiple point of view.

14 COMMISSION VICE CHAIRPERSON HARRIS: That's
15 reassuring.

16 EXECUTIVE DIRECTOR BREED: Yeah.

17 COMMISSION VICE CHAIRPERSON HARRIS: One-stop
18 shopping.

19 (Laughter.)

20 EXECUTIVE DIRECTOR BREED: It's one-stop shopping.

21 Any more questions on that?

22 Okay, the last and final one is the Stabling and
23 Vanning Fund. This is a handout, 7-15. Does everybody have
24 that? Wait a minute, see if you -- I think it's under your
25 book, Jerry. Take a minute.

1 Did you get it? John, do you have one?

2 COMMISSION VICE CHAIRPERSON HARRIS: I got one.

3 EXECUTIVE DIRECTOR BREED: On the Stabling and
4 Vanning Fund, we're in the process of completing an audit of
5 that fund, and have been down to the -- to ScotWinc and
6 NotWinc, and are not in a position, really, to make a
7 fair -- until the audit is complete, until it's written up,
8 and we've had a chance to get back to the two organizations,
9 not to really give you a fair interpretation of what the
10 audit says.

11 We do want to go back and review our findings with
12 NotWinc and ScotWinc, and everyone else.

13 Basically, what this report here is, is just a
14 preliminary report, and it basically says that the
15 contributions, the money going to Stabling and Vanning is
16 going down. That amount is going down from 2007 to 2008.

17 And we don't really know what is happening to it
18 as far as 2009's concerned, but we can only assume that it's
19 going down, also.

20 There was some contributions made back to the fund
21 from the Worker's Comp, the AIG program money that was lent
22 to start the Worker's Comp program. There was money lent
23 out of that fund to the AIG fund and that money is coming
24 back.

25 The association -- I mean, the TOC, or ScotWinc,

1 or NotWinc might want to explain further how that's working
2 and how -- what -- how that is going to be extended, if that
3 continues on, or is that a one-shot deal, or exactly what
4 happens with that.

5 MR. HALPERN: Ed Halpern, California Thoroughbred
6 Trainers.

7 When the Worker's Comp program was originally
8 started, it was enabled and created because the industry put
9 up funds as security, about \$11 million. Just about all of
10 that has been returned. And there's a final, \$1.8 million
11 that will be returned. As soon as we complete paying the
12 '07-'08 premium to AIG, they will then shift back a million
13 eight, part of which goes to ScotWinc, and part of which
14 goes to the TOC, and to the racing organizations.

15 I'm sorry, '08-'09 premium, I misspoke.

16 As soon as the payments on that are completed,
17 which I'm hoping will be within the new few days, or next
18 few weeks, anyway. And then a million eight will come back,
19 part of which will go to those funds.

20 And that will be the final -- that will pretty
21 much be the final payment from AIG, and all the funds that
22 were loaned will then have been paid back with interest.

23 EXECUTIVE DIRECTOR BREED: So after '09, then that
24 deficit will -- there's no more repayment?

25 MR. HALPERN: That's correct.

1 EXECUTIVE DIRECTOR BREED: In other words, '10
2 there's no payment back to the -- no money coming back.

3 COMMISSION VICE CHAIRPERSON HARRIS: It sounds
4 like it was fortuitous there was money coming back, but that
5 pipeline is getting closed down.

6 MR. HALPERN: Yeah, there may be some small
7 amounts, but nothing significant.

8 COMMISSION VICE CHAIRPERSON HARRIS: But it seems
9 like the real challenge for ScotWinc and NotWinc will be to
10 balance their budget, either through increased revenue, or
11 decreased expenses, or a lesser program.

12 I mean, fortunately, we've had a very good program
13 of stabling and vanning, but it may be too luxurious for the
14 amount of income that we have now available.

15 EXECUTIVE DIRECTOR BREED: Any other questions on
16 the Stabling and Vanning Fund? Any other comments?

17 COMMISSION VICE CHAIRPERSON HARRIS: It would be
18 good if we can get the '09. I'm concerned that '09 may
19 look, you know, worse than these numbers. If, as I
20 understand it, satellite wagering is down, and I would
21 presume that expenses are not down proportionately, that
22 it's a -- I would guess that we've got a pretty dire
23 situation.

24 Would anyone like to comment on that?

25 EXECUTIVE DIRECTOR BREED: Anybody want to comment

1 on that?

2 MR. FRAVEL: Craig Fravel. Nobody else wants to
3 come up, so I'll help you out.

4 Yeah, we've been having a number of meetings of
5 the Stabling and Vanning Committee of ScotWinc. NotWinc is
6 a separate organization, as you're aware, so they have
7 different issues.

8 But we are considering various adjustments on the
9 expense side of the ledger to try to balance '09.

10 The money that Ed mentioned, the \$1.8 million
11 that's due to come back in the next few weeks is, we
12 believe, getting close, along with some adjustments that
13 we're considering, to get us to a balanced budget for the
14 '09 year based on our current projections.

15 And our Controller's Committees are regularly
16 updating their projections based on the current experiences
17 at Santa Anita, as well as Golden Gate.

18 So we're continually monitoring and managing the
19 funds the best we can.

20 The one -- there are two things that are causing
21 these deficits. One is the shifting of money from
22 traditional satellite wagering facilities to ADW wagering.

23 Well, three things. And the second thing is the
24 economy, which we're all aware of, which has taken a bigger
25 bite out of traditional facilities than I think the ADW

1 companies, although both are taking bites.

2 And then the third thing is the fact that the fund
3 is capped at 1.25 percent. Which, as you're aware, in your
4 meeting, I think last month, we moved the stabling and
5 vanning deduction up to the full amount of the authorized
6 deduction.

7 So absent statutory relief, we can't raise the
8 amount of money.

9 And, candidly, we're reluctant to do that anyway,
10 if we can find cost savings. Because, you know, whenever
11 you raise that amount, it comes out of purses and
12 commissions, and so it does have a negative economic impact
13 on our business.

14 So we're working. We don't have final, final
15 decisions on exactly what's going to happen to reduce
16 expenses, at least at ScotWinc, but those should be coming
17 up in the next month or so, I think.

18 MR. HARTMAN: Robert Hartman, Golden Gate Fields.

19 The stabling and vanning in the north is actually
20 getting better. With the closure of Bay Meadows, we went
21 from three facilities that we had to pay for to two
22 facilities, so the operating expenses have gone.

23 In addition to that, Golden Gate Fields was the
24 largest stabling operation, and given that we have more
25 racing dates, therefore, we have less training dates. So

1 the amount that Golden Gate Fields gets reimbursed from
2 stabling and vanning has gone down dramatically, as well,
3 with our increased racing dates.

4 So I think for 2009, by the end of 2009 we're
5 expending a small deficit. But by 2010, we think that the
6 fund will be balanced and we'll actually be back in the
7 black.

8 EXECUTIVE DIRECTOR BREED: Thank you.

9 Any other questions on the stabling and vanning?

10 I'm handing out to you -- that concludes our
11 review of the various funds.

12 I've handed out to you a copy of SB, Senate Bill
13 16.

14 Last week, I guess, as a trailer to the State
15 Budget Act, SB 16 was passed by the Legislature, was signed
16 by the Governor on February the 20th.

17 And basically, here's what this bill does. I know
18 that there's a lot of people in the audience that took part
19 in the drafting and the design of this bill, which I do not
20 claim to have been part of, thank God.

21 But here's what the bill does, the bill does one
22 thing primarily, and that is that it reduces and eliminates
23 the -- all but eliminates the license fee that the racing
24 associations are paying to the states.

25 Which before went into the fund that I mentioned,

1 or was the fund that was repealed and amended. And that was
2 to be like \$40 million. This was the last amount of license
3 fee that the industry pays to the State of California, or
4 anybody else.

5 That amounts to \$32 million, approximately \$32
6 million that is to be returned or to stay with the
7 associations, the fairs, and the horsemen. And also, the
8 Breeders Award Program. That's \$32 million that you did not
9 have this year, that you will have next year in racing.

10 In addition, the legislation prescribes \$32
11 million be -- from the General Fund, be given to the fairs
12 for their -- basically, that amount of money goes to the
13 maintenance of the F&E division, the Fairs and Exposition
14 Division of Food and Agriculture, which is about \$3 million.

15 The remainder goes in various distribution to over
16 80 fairs in the State of California. And that's all
17 distributed from the Fair and Exposition Fund.

18 The third requirement is that the California Horse
19 Racing Board consult with the industry. That the California
20 Horse Racing Board develop a formula for their budget, based
21 upon the '08-'09 budget, which is kind of the floor.

22 Based on that budget, the Horse Racing Board is to
23 develop a formula, and then consult with the industry, and
24 that formula becomes, in essence, the replacement of the
25 former license fee.

1 That formula is, according to the code, is to be
2 developed on the basis of breed of horse run, type of -- and
3 type of association that it is.

4 So in other words, there's a formula for
5 thoroughbreds, there's a formula for harness horses and so
6 on, and so forth, harness racing, et cetera.

7 I can tell you right now -- and then that formula
8 is to go through the normal budget cycle to the Department
9 of Finance, through their analysis, and then to the various
10 budget hearings, and we have to have all this done by July
11 1, of this year.

12 Now, I can tell you right now that we have gone
13 through that process, almost in its entirety, for '09-'10,
14 which begins July 1, and we've gone through the finance
15 analysis for our '09-'10 budget, and also we are prepared to
16 go through the budgetary -- the Senate and House
17 subcommittees on the budget.

18 Now, but we have not developed a formula to
19 present to the Board. We're in the process of doing that.
20 And once we have that formula complete, then we will share
21 it with the Board and then consult with the industry.

22 So that is the status of SB 16, as far as the
23 California Horse Racing Board is concerned.

24 Mr. Chairman?

25 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, I think

1 it's important, too, with this formula that we get maximum
2 input from all of the stakeholders on how it's -- you know,
3 what the most fair and equitable system is, too. Rather
4 than just give them something and say this is what we've
5 figured out.

6 That we -- you may have some meetings with a
7 committee of the horsemen, and the tracks, and different
8 interests, so that it's not just something we give them.

9 COMMISSIONER MOSS: Do you have percentages, as
10 far as how the money breaks down between thoroughbreds, and
11 quarter horses, and harness horses, and things like that?

12 EXECUTIVE DIRECTOR BREED: Commissioner Moss asked
13 if we have any percentages of how that break down is.

14 I think in your -- I don't know if it's in your
15 packet or not, but I mean there's -- under that review
16 section that we did a minute ago, there is a -- and in your
17 annual report it shows the amount of license fee paid by the
18 various associations.

19 COMMISSIONER MOSS: Oh, okay.

20 EXECUTIVE DIRECTOR BREED: For example, in the
21 north it's 1.3 percent for a thoroughbred association, in
22 the south it's two percent.

23 And the night industry pays about point -- what is
24 it, .4? Point four.

25 COMMISSION VICE CHAIRPERSON HARRIS: Wasn't there

1 something in some of the legislation that said everyone had
2 to pay at least their variable cost, which would be they
3 were defined somehow that -- because one of the issues was
4 the harness wasn't generating enough with their license fee
5 to pay their variable cost --

6 EXECUTIVE DIRECTOR BREED: Right.

7 COMMISSION VICE CHAIRPERSON HARRIS: -- and we
8 subsequently had to bill them for that.

9 EXECUTIVE DIRECTOR BREED: Right. The reference
10 you're making is -- I can't think of the code section, but
11 it says that the license fee has to be enough to pay for the
12 drug testing and for the stewards, for those two services.

13 What we have done, there's only -- really, there's
14 only one association that has not -- that does not reach
15 that floor amount, and that is Cal-Expo harness. We've sent
16 them a bill and they're -- we're waiting for the money to
17 come back.

18 I don't know what we're going to do with the money
19 when it comes back, but we're waiting for it to come back.

20 COMMISSION VICE CHAIRPERSON HARRIS: But that's
21 still -- that was not repealed with the new legislation.

22 EXECUTIVE DIRECTOR BREED: No, it wasn't.

23 COMMISSION VICE CHAIRPERSON HARRIS: Okay.

24 EXECUTIVE DIRECTOR BREED: No, it was not.

25 COMMISSION VICE CHAIRPERSON HARRIS: So, really, a

1 lot of the debate will you've got that baseline, but the
2 debate will be, really, on the extra, all our administrative
3 costs --

4 EXECUTIVE DIRECTOR BREED: Right.

5 COMMISSION VICE CHAIRPERSON HARRIS: -- and the
6 various costs of running CHRB, who's going to pay that and
7 what's the pro rata.

8 EXECUTIVE DIRECTOR BREED: That's correct.

9 COMMISSION VICE CHAIRPERSON HARRIS: What's the
10 best way to do that?

11 EXECUTIVE DIRECTOR BREED: Well, for example,
12 we've had -- there's been legislative input that we --
13 especially after the quick pick -- the quick pick debacle,
14 we've had legislative input that we should be -- that we
15 should have, and the Board should be responsible for, an
16 independent, real-time monitoring system on wagering, on all
17 pari-mutuel wagering, ADW, et cetera.

18 We have gone to Scientific Games, since Scientific
19 Games is a tote company for all the racing, and we have
20 asked them to permit a company called Monitoring Plus, which
21 has made a presentation before the Board, to do a model on
22 what this would involve, what this would -- and how much it
23 would cost.

24 This data has not been developed, yet, but they're
25 in the process -- we're waiting for a response from

1 Scientific Games to give us the approval to allow Monitoring
2 Plus to do this.

3 We estimate this would cost -- a real-time
4 monitoring program, added to our budget, would cost about
5 \$1.4 million.

6 If we -- just theoretical, off the top of our
7 head, if we add that to our existing '08-'09 budget, plus
8 some of the drug testing requirements that we -- additional
9 drug testing requirements that we have stipulated in our
10 '09-10 budget, the cost -- the license fee would go to about
11 .333, or one-third of one percent of all wagers, and that
12 would include ADW wagers.

13 If you reduced that down to where you're not
14 charging for any of this to the ADW companies then,
15 obviously, the percentage goes up.

16 So instead of paying, for example, say the
17 percentage goes up to like .4 to do this whole package of
18 license fee, .4 instead of like 2 percent -- .4 license fee
19 to operate the regulatory agency, as opposed to 2 percent.
20 That's basically where you are.

21 COMMISSION VICE CHAIRPERSON HARRIS: Any other
22 questions on this?

23 COMMISSIONER ISRAEL: Yeah, what -- it refers, in
24 this document that we were handed, to satellite wagering,
25 without defining what constitutes satellite wagering. So

1 would that reasonably include ADW, as well as what we
2 commonly regard as satellite facilities, because the signal
3 is transmitted by satellite?

4 COMMISSION VICE CHAIRPERSON HARRIS: No, I think
5 it's -- as I understood it, the satellite wagering is
6 satellites in California. These are all the fairs and other
7 tracks that are operating as satellites, are really a
8 different type of wagering than ADW wagering.

9 COMMISSIONER ISRAEL: Yeah, but --

10 EXECUTIVE DIRECTOR BREED: Instead of a satellite
11 up in the sky, it's a satellite on the ground.

12 COMMISSIONER ISRAEL: Oh.

13 EXECUTIVE DIRECTOR BREED: An annex.

14 COMMISSIONER ISRAEL: An annex, okay. But it's
15 not defined anywhere.

16 EXECUTIVE DIRECTOR BREED: No, it's not.

17 COMMISSIONER ISRAEL: That would be called a
18 loophole, on the ground or in the sky.

19 EXECUTIVE DIRECTOR BREED: Yeah.

20 COMMISSION VICE CHAIRPERSON HARRIS: It might have
21 been an original satellite legislation when --

22 COMMISSIONER ISRAEL: What did you say, Drew?

23 MR. COUTO: There is.

24 COMMISSIONER ISRAEL: Oh, it is defined in law,
25 okay. It's not on this one.

1 MR. FRAVEL: The original authorizing -- Craig
2 Fravel, Del Mar.

3 The original authorizing statute, that authorized
4 satellite wagering, back in 1988, defined that.

5 COMMISSIONER ISRAEL: Oh.

6 MR. FRAVEL: So those definitions are incorporated
7 in the new bill.

8 COMMISSIONER ISRAEL: Okay.

9 COMMISSION VICE CHAIRPERSON HARRIS: Okay, any
10 other questions on this?

11 COMMISSIONER MOSS: When will it be in effect?

12 EXECUTIVE DIRECTOR BREED: Commissioner Moss asked
13 when will this go into effect? It goes into effect July 1,
14 '09, this year.

15 COMMISSIONER MOSS: And when will the amounts,
16 specific amounts be allocated and --

17 EXECUTIVE DIRECTOR BREED: Well, it's an ongoing
18 allocation. In other words, instead of paying the money in,
19 the association retains the money.

20 COMMISSIONER MOSS: Uh-hum.

21 EXECUTIVE DIRECTOR BREED: In other words, they
22 pay on a weekly basis right now.

23 COMMISSIONER MOSS: Oh, I see.

24 EXECUTIVE DIRECTOR BREED: They pay their license
25 fee on a weekly basis.

1 Starting July 1, instead of paying, you know,
2 \$25,000 at two percent, they'll be paying whatever they're
3 paying at --

4 COMMISSION VICE CHAIRPERSON HARRIS: But we've got
5 to find what the "if" is.

6 EXECUTIVE DIRECTOR BREED: Yeah.

7 COMMISSION VICE CHAIRPERSON HARRIS: We've got to
8 come up with a number. Right now, when -- I'm not really
9 clear, when does this -- this goes in effect July 1, or did
10 this -- was this -- did 16 have an urgency clause to it
11 or --

12 COMMISSIONER ISRAEL: It says it's July 1.

13 EXECUTIVE DIRECTOR BREED: July 1.

14 COMMISSION VICE CHAIRPERSON HARRIS: July 1, okay.
15 Well, that's good.

16 COMMISSIONER ISRAEL: The new budget.

17 COMMISSION VICE CHAIRPERSON HARRIS: So we've got
18 time to --

19 EXECUTIVE DIRECTOR BREED: Theoretically, July 1,
20 the fairs get their money and you stop paying the license
21 fee that you're paying right now, that's the way it works.

22 COMMISSIONER ISRAEL: Who's you?

23 EXECUTIVE DIRECTOR BREED: You is the
24 associations. The associations stop paying.

25 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, because

1 that's the reason we need a number that -- I mean, we can't
2 just have the first guys pay and then it fills up the pot.

3 EXECUTIVE DIRECTOR BREED: Well, we're working on
4 a strategy. But, I mean, to understand this, to further
5 understand this, we have a cash flow problem.

6 In other words, every year our money is not
7 continuously appropriated. Whatever we have at the end of
8 the year is turned back to the General Fund.

9 So starting at -- starting July 1, we have zero
10 amount in the checking account.

11 And Fravel's laughing.

12 MR. FRAVEL: You sound like the rest of us.

13 (Laughter.)

14 EXECUTIVE DIRECTOR BREED: Yeah, really. So July
15 1, we start with zero in the checking account. And as the
16 money comes in, we spend the money, just like everybody else
17 does.

18 COMMISSION VICE CHAIRPERSON HARRIS: Yeah. No, I
19 think it will work. I think part of the burden on the Board
20 will be to be prudent in our spending and still do a good
21 job, and it's always a balancing act between spending money
22 and being so frugal that you don't do a good job, so just
23 where the balance is.

24 EXECUTIVE DIRECTOR BREED: Yeah.

25 COMMISSION VICE CHAIRPERSON HARRIS: Okay,

1 anything else on this?

2 EXECUTIVE DIRECTOR BREED: That's it.

3 COMMISSION VICE CHAIRPERSON HARRIS: Okay, let's
4 move on.

5 EXECUTIVE DIRECTOR BREED: Unless you want to
6 appoint a working committee to work on this formula?

7 COMMISSION VICE CHAIRPERSON HARRIS: Well, we
8 could. I think it should really be -- I think what we
9 really need is an industry committee. And I think people
10 need to contact, I mean, both from the horsemen's side, and
11 the different breeds' side, and the track side, and come up
12 with what they feel is a good committee.

13 Now, for the Board, I think the whole thing will
14 get reported back to the Board, but it may be good to have a
15 Board Committee.

16 Who would like to be on a committee to somewhat
17 monitor the progress of this?

18 EXECUTIVE DIRECTOR BREED: Don't everybody jump up
19 at once.

20 Why don't we come up with a recommendation?

21 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, why
22 don't we come up with a recommendation to -- because I don't
23 think a Board Committee is going to make too much
24 difference, it's really going to have to come to the Board
25 for approval, anyway.

1 EXECUTIVE DIRECTOR BREED: Right. And we'll get
2 input from the --

3 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

4 EXECUTIVE DIRECTOR BREED: We'll consult the
5 industry.

6 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

7 Yeah, Cliff?

8 MR. GOODRICH: Mr. Chairman, just a quick remark.
9 And I only, I guess in this case, speak for myself. But,
10 you know, we're sitting here almost like an industry guilt
11 trip, and I would just like to offer an observation that I
12 think this was a recognition of the powers that be that we
13 have an industry in dire trouble. We have a fair system
14 that's running out of money, with dilapidated facilities. I
15 think there was a recognition of the near 50,000 jobs, and
16 the word stimulus, which Jack used. This industry needs a
17 stimulus.

18 Hopefully, this is a start. Hopefully, it will
19 not just preserve jobs, but grow jobs. And, hopefully, we
20 can grow this industry.

21 So I don't think there's a need to feel any kind
22 of guilt here. This industry needs this badly and,
23 hopefully, it's the start of things to come.

24 Because I know the people behind me are looking at
25 it that way. We need a shot in the arm. It's not a level

1 playing field. We used to pay a license fee because we had
2 a monopoly on the gambling business in California. That is
3 far from the truth.

4 And I think we need to take advantage and show the
5 powers that be in Sacramento that we're going to build this
6 industry, with this kind of start.

7 So if anybody's feeling guilty, I'm not one of
8 them. This industry needed this. Thank you.

9 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, that
10 was well stated, I think we all agree with that.

11 Okay, anything else on that?

12 I guess the next item is election of Board
13 Chairman and Vice Chairman. I think, technically, I should
14 turn this over to you. Why don't I turn this over to Kirk.

15 EXECUTIVE DIRECTOR BREED: Okay, Mr. Chairman,
16 nominations are now in order for a Chairman of the
17 California Horse Racing Board.

18 COMMISSION VICE CHAIRPERSON HARRIS: Mr. Choper's
19 got something.

20 EXECUTIVE DIRECTOR BREED: Mr. Choper.

21 COMMISSIONER CHOPER: Yeah, I nominate John
22 Harris.

23 EXECUTIVE DIRECTOR BREED: Are there any other
24 nominations?

25 COMMISSION VICE CHAIRPERSON HARRIS: Is there a

1 second?

2 COMMISSIONER ANDREINI: I'll second that.

3 COMMISSIONER MOSS: I nominate David Israel.

4 EXECUTIVE DIRECTOR BREED: There are -- I guess
5 there's two nominees. Does anyone else wish to nominate
6 anyone else? We're running out of Board members so -- I'll
7 entertain a motion to cease nominations.

8 COMMISSIONER CHOPER: So moved.

9 EXECUTIVE DIRECTOR BREED: So moved and second.
10 Nominations are ceased.

11 I would ask the -- I beg your pardon?

12 I would ask the Board's indulgence, I would like
13 to, for the benefit of everybody here, and in order to
14 complete this election, if you will, that each nominee have
15 an opportunity to state, to the Members of the Board,
16 exactly what you -- what you see as the future of horse
17 racing and how you'd like to participate and be the
18 Chairman.

19 Would you like to go first, John?

20 COMMISSION VICE CHAIRPERSON HARRIS: Well, I guess
21 I could. Actually, I've been on this Board for quite a
22 while, and I'm flattered with this nomination, again, and
23 would like to stay as Chairman for some period. Although at
24 some point I would like to evolve off. But I hated to leave
25 right now, as we're not -- we don't have a full Board, and

1 there are quite a few other things we'd like to do.

2 I was proud to be on the Board when we did -- you
3 know, we have accomplished much in the last seven or eight
4 years, and we still have more to do. And sometimes when you
5 get into these things and you sort of develop a whole
6 history of what has gone on, and I think I'm helpful to the
7 Board by remembering all the different aspects of the game
8 and, you know, why we did certain things.

9 And I think even though I would not want to stay
10 around for Chairman too long, I'm happy to stay for a while.
11 And appreciate the confidence.

12 COMMISSIONER ISRAEL: Can I make a suggestion,
13 then?

14 EXECUTIVE DIRECTOR BREED: Sure.

15 COMMISSIONER ISRAEL: That perhaps we
16 appoint -- put off the selection, appoint a nominating
17 committee, and perhaps wait until we have a full Board, and
18 that might accomplish -- because as Vice Chair, you'll
19 continue as Chair for some period of time.

20 In most boards I'm on, they establish a nominating
21 committee before they hold an election. And we are short
22 one member and maybe we can come to some sort of unanimous
23 agreement at some point going forward.

24 COMMISSION VICE CHAIRPERSON HARRIS: Yeah, it's
25 sort of tough with these type of boards, with the Public

1 Meeting Act, and all that stuff.

2 But I think my view of the Board would be they can
3 elect a Chairman at any time. I mean, it's not a term type
4 thing. It's more like parliament in Britain, or something,
5 you just elect a Chairman, basically, whenever you want. If
6 you don't -- I don't know, conceivably, I think it's good to
7 have a Chairman because there are several duties which,
8 arguably, the Vice Chairman or acting Chairman could do, but
9 I think it would be just cleaner to go ahead and elect a
10 Chairman today, regardless of who it is.

11 EXECUTIVE DIRECTOR BREED: A motion's on the floor
12 to elect a Chairman. Do you want to offer a substitute
13 motion that we put it over or what?

14 COMMISSIONER ISRAEL: I would offer that
15 substitute motion that we put it over and that a nominating
16 committee be appointed.

17 COMMISSION VICE CHAIRPERSON HARRIS: Is there a
18 second to that motion?

19 COMMISSIONER MOSS: Yeah, I'll second that.

20 COMMISSION VICE CHAIRPERSON HARRIS: Okay.

21 COMMISSIONER CHOPER: Is there any precedent for
22 the way -- I have never been present for the election of
23 Chairs or Vice Chairs, so I just wonder what the precedent
24 is? Did we do it by nominating committee in the past? That
25 doesn't mean you can't do it that way in the future, but

1 just curious.

2 EXECUTIVE DIRECTOR BREED: No. No, it hasn't.

3 COMMISSIONER CHOPER: Just been done in an open
4 meeting like this.

5 EXECUTIVE DIRECTOR BREED: Right.

6 COMMISSION VICE CHAIRPERSON HARRIS: I think
7 everything we do has to really be done in an open meeting.

8 COMMISSIONER ISRAEL: Well, no, I'm for it.

9 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

10 COMMISSIONER ISRAEL: Where the nominating
11 committees are established and then they present their
12 nominations in the opening meeting. And, actually, the
13 nominating committee meeting is open to the public, it's
14 noticed and open.

15 COMMISSION VICE CHAIRPERSON HARRIS: Yeah. Yeah,
16 that would be possible.

17 COMMISSIONER ISRAEL: Okay.

18 COMMISSION VICE CHAIRPERSON HARRIS: Okay, you got
19 a --

20 EXECUTIVE DIRECTOR BREED: Well, we have to vote
21 on it.

22 COMMISSION VICE CHAIRPERSON HARRIS: Yeah.

23 EXECUTIVE DIRECTOR BREED: So a substitute motion
24 has been offered to put this over.

25 Can I see a -- all those in favor of the motion,

1 raise your hand?

2 (Vote taken.)

3 EXECUTIVE DIRECTOR BREED: Two.

4 All those opposed to the motion? Three. Four.

5 Okay, motion fails.

6 All right, David, would you like to speak on
7 behalf of yourself?

8 COMMISSIONER ISRAEL: Well, obviously, I don't
9 have the length of service on this Board that Commissioner
10 Harris does, but I think going forward a new perspective,
11 from someone who is familiar with the business, but not
12 integrally a part of it, and doesn't have any financial
13 benefit from it might help us make the changes that are
14 necessary to encourage and ensure its survival and growth as
15 the world, in the financial world, changes around us, and
16 our marketing demands are changed, and science changes.

17 And I'd like the opportunity to lead us in that
18 new direction.

19 EXECUTIVE DIRECTOR BREED: Thank you. I would ask
20 that we vote by secret ballot, so I'll pass out a piece of
21 paper.

22 COMMISSION VICE CHAIRPERSON HARRIS: Is that
23 legal?

24 EXECUTIVE DIRECTOR BREED: Yeah, it's legal.

25 (Ballot vote taken.)

1 EXECUTIVE DIRECTOR BREED: It takes four votes to
2 elect a Chairman, and I've had this confirmed by counsel,
3 and the new Chairman is Mr. Harris.

4 COMMISSIONER ISRAEL: Congratulations.

5 COMMISSION CHAIRPERSON HARRIS: Thank you.

6 (Applause.)

7 COMMISSION CHAIRPERSON HARRIS: Well, I appreciate
8 the confidence. This industry, as everyone knows, has so
9 many challenges that we just all have to work together to
10 make it all we think we can be.

11 EXECUTIVE DIRECTOR BREED: Can I interrupt, before
12 we elect a Vice Chairman?

13 COMMISSION CHAIRPERSON HARRIS: Yeah.

14 EXECUTIVE DIRECTOR BREED: Is Rod Blonien in the
15 room? Would you come forward, please?

16 Would you please honor our tradition and lead
17 "Happy Trails" for the ex-Chairman, who's at the rear of the
18 room.

19 COMMISSION CHAIRPERSON HARRIS: Oh, is he still
20 here?

21 MR. BLONIEN: Well, for those of you that are new
22 to the Board, this is something we started about 20 years
23 ago when someone left the Board, and I came forward and sang
24 "Happy Trails" to them. And so we've carried the tradition
25 on through the years.

1 And Richard Shapiro has said to me, on numerous
2 occasions, "I know, you're just waiting to sing Happy Trails
3 to me."

4 (Laughter.)

5 MR. BLONIEN: I really wasn't. But as I think
6 most people know, Richard is working, continuing to work
7 with the industry, and he's working with a thing called CRA,
8 California Racing Alliance, and we're trying to get everyone
9 together to pursue legislation, and other things that will
10 benefit the industry, and we welcome his leadership.

11 And with that: (All sing Happy Trails.)

12 Well, I could go on and on, but in the interest of
13 brevity --

14 (Applause.)

15 MR. BLONIEN: Jerry Moss has asked me to do a hip-
16 hop rendition of that, but don't quite have the beat down.
17 Thank you.

18 COMMISSION CHAIRPERSON HARRIS: That's good.
19 Yeah, wherever Richard rides, he will always leave a lot of
20 dust behind him.

21 (Laughter.)

22 COMMISSION CHAIRPERSON HARRIS: Okay, go ahead
23 with the --

24 EXECUTIVE DIRECTOR BREED: Okay.

25 COMMISSION CHAIRPERSON HARRIS: Well, I guess we

1 can go ahead with the nominations for Vice Chair.

2 EXECUTIVE DIRECTOR BREED: Yeah, right here.

3 COMMISSION CHAIRPERSON HARRIS: Your turn, Jesse.

4 COMMISSIONER CHOPER: You want nominations?

5 COMMISSION CHAIRPERSON HARRIS: Yeah, nominations
6 for Vice Chair.

7 COMMISSIONER CHOPER: Yeah, I nominate David
8 Israel.

9 COMMISSION CHAIRPERSON HARRIS: Okay.

10 COMMISSIONER ANDREINI: I'll second the motion.

11 COMMISSION CHAIRPERSON HARRIS: Okay, it's been
12 moved and seconded. Any other nominations?

13 COMMISSIONER CHOPER: I move that nominations be
14 closed.

15 COMMISSIONER ISRAEL: Just don't make me make a
16 speech about it.

17 COMMISSION CHAIRPERSON HARRIS: Okay.

18 COMMISSIONER MOSS: I'll second the motion.

19 COMMISSION CHAIRPERSON HARRIS: Okay, nominations
20 are closed. We're now voting for David Israel as Vice
21 Chairman of the Racing Board.

22 All in favor?

23 (Ayes.)

24 COMMISSION CHAIRPERSON HARRIS: Unanimous.

25 All right. Well, that's great, I'm looking

1 forward to --

2 COMMISSIONER ISRAEL: I'm in charge of vice.

3 COMMISSION CHAIRPERSON HARRIS: Yeah, well --

4 COMMISSIONER ISRAEL: It is a gambling enterprise.

5 COMMISSION CHAIRPERSON HARRIS: Yeah, I'm looking

6 forward to working with David, I think he'll be great.

7 He'll be a big asset to the Board.

8 EXECUTIVE DIRECTOR BREED: That's it.

9 COMMISSION CHAIRPERSON HARRIS: Okay, what else
10 have we got? It's public comments. Is Jammer here?

11 Okay, we are going to have a -- on the agenda, at
12 one of the upcoming meetings, probably March, a report,
13 which I think Jerry March had asked for, on sort of the
14 state of the industry as far as the inventory of horses
15 going forward. And part of it will revolve around the
16 various Cal Bred breeding programs of all the breeds,
17 thoroughbreds, and harness, and quarters.

18 But also just nationally, I think we need to take
19 a look. Because I think it's a real concern. I mean, all
20 the horses that are going to be born, are born now. But
21 going forward, how much inventory can we have?

22 Because I'm concerned, with the economic situation
23 that we're in, that we just don't have the economic stimulus
24 to encourage people to continue to race horses, or pay in to
25 train horses to keep this industry at an inventory level

1 that it needs.

2 So I think even though, you know, we've got
3 somewhat of a gloomy forecast, but to at least get our arms
4 around what we do have, and how we think we can best manage
5 the inventory and what, if anything, all of us can do to
6 make things better.

7 So it would be good to at least go back and see
8 what our numbers are now, and how many numbers we're going
9 to have coming on.

10 I mean, the two-year-olds of this year were
11 actually born in '07. And so any American conceived here,
12 in '09, isn't going to foal until '10, so that's not going
13 to race until like probably '12 or '13.

14 So it's a long-term process and we need to have as
15 good a feel, as an industry, of what we really have coming
16 on.

17 And, hopefully, we'll look at how many fans we
18 have coming on, as well.

19 Okay, anything else?

20 If not, we're adjourned to a -- we're not going to
21 adjourn, we're going to go into a closed session.

22 EXECUTIVE DIRECTOR BREED: You're in a public
23 comment session.

24 COMMISSION CHAIRPERSON HARRIS: Well, that was the
25 public comment session, I think.

1 COMMISSIONER CHOPER: No, no one came forward.

2 EXECUTIVE DIRECTOR BREED: So we have -- okay, we
3 have --

4 COMMISSIONER CHOPER: Despite his best efforts to
5 get someone to come forward.

6 (Thereupon the California Horse Racing
7 Board Regular Meeting resolved into
8 Closed Executive Session and the Public
9 Meeting was adjourned at 12:17 p.m.)

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CERTIFICATE OF REPORTER

I, TROY A. RAY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Meeting of the California Horse Racing Board; that thereafter the recording was transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, or in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of March, 2009.

Troy A. Ray

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