



These challenges included the following: rates under LTIAP will be higher than allowed by statute; LTIAP is inconsistent with BPA's governing statutes because it does not fully satisfy federal needs for Intertie capacity before providing access to nonfederal utilities, and it fails to maximize BPA returns and to recover from Northwest utilities all the revenue BPA foregoes by allowing these utilities access to the Intertie; BPA's adoption of LTIAP was arbitrary and capricious; BPA abused its discretion in adopting the Formula Allocation provisions because they are anticompetitive and BPA's stated objectives could be achieved by more competitive alternatives; BPA has no authority to limit access to the Intertie because of the perceived impact of generating facilities on fish and wildlife; and such restrictions are the sole province of the Federal Energy Regulatory Commission through its licensing procedures. The court found all these contentions to be without merit.

The court found that in developing LTIAP, BPA balanced three interests: the desires of Northwest generators to sell or exchange power on a firm basis to California; the desires of BPA's total requirement customers for stable and favorable rates; and its obligation to repay the U.S. Treasury. The court found that LTIAP complies with statutory requirements while adequately balancing the interests of the petitioners, and that BPA's actions and decisions in developing LTIAP were not arbitrary and capricious. The court affirmed LTIAP in its entirety.

RECENT MEETINGS:

At its October 3 meeting, CEC unanimously approved \$15,000 in advance funding to APP-TECH, Inc. under its Intervenor Funding Program. This is the first time an advance funding award has been made under the Intervenor Funding Program. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 128 and Vol. 9, No. 3 (Summer 1989) p. 118 for background information on the Program.) The award will cover the start-up costs of a previously approved project APP-TECH will complete for the Building Standards Committee. The project will use computer programs to determine the percentage of existing building which would be able to comply with the requirements of proposed new building regulations, if the regulations are adopted. The Commission approved the request because up-front costs for software development were significant, and APP-TECH, Inc., is a one-person consulting firm that could not afford to perform the project otherwise.

FUTURE MEETINGS:

General CEC meetings are usually held every other Wednesday in Sacramento.

HORSE RACING BOARD

Executive Secretary: Dennis Hutcheson
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The California Horse Racing Board (CHRB) is an independent regulatory board consisting of seven members. The Board is established pursuant to the Horse Racing Law, Business and Professions Code section 19400 *et seq.* Its regulations appear in Chapter 4, Title 4 of the California Code of Regulations (CCR).

The Board has jurisdiction and power to supervise all things and people having to do with horse racing upon which wagering takes place. The Board licenses horse racing tracks and allocates racing dates. It also has regulatory power over wagering and horse care. The purpose of the Board is to allow parimutuel wagering on horse races while assuring protection of the public, encouraging agriculture and the breeding of horses in this state, generating public revenue, providing for maximum expansion of horse racing opportunities in the public interest, and providing for uniformity of regulation for each type of horse racing. (In parimutuel betting, all the bets for a race are pooled and paid out on that race based on the horses' finishing positions, absent the state's percentage and the track's percentage.)

Each Board member serves a four-year term and receives no compensation other than expenses incurred for Board activities. If an individual, his/her spouse, or dependent holds a financial interest or management position in a horse racing track, he/she cannot qualify for Board membership. An individual is also excluded if he/she has an interest in a business which conducts parimutuel horse racing or a management or concession contract with any business entity which conducts parimutuel horse racing. Horse owners and breeders are not barred from Board membership. In fact, the legislature has declared that Board representation by these groups is in the public interest.

MAJOR PROJECTS:

Trifecta Wagering. At its July 26 meeting, the Board resumed its discussion of the proposed addition of section 1979, Title 4 of the CCR, which would allow racing associations the option of

conducting Trifecta parimutuel wagering (selecting horses finishing first, second, and third, in that exact order). (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 202-03 and Vol. 10, No. 1 (Winter 1990) p. 148 for background information.)

Jim Smith, President of the Federation of California Racing Associations, Inc., requested that CHRB consider permitting Trifecta wagering in California, and proposed that the Board establish a one-year experimental period for Trifecta, beginning with the effective date of the adoption of the regulation, and limit each association to one Trifecta per day during that experimental period.

On August 24, CHRB held a public hearing regarding the proposed adoption of section 1979, including Mr. Smith's proposed changes. The Board subsequently adopted the proposed regulation subject to other minor modifications, and submitted it to the Office of Administrative Law (OAL) for approval. On September 19, OAL rejected the proposed regulation on grounds that it failed to comply with the necessity and clarity standards in Government Code section 11349.1, and that CHRB failed to comply with the procedural requirements of the Administrative Procedure Act (APA). CHRB re-referred the proposed amendment to committee for revision.

Implementation of CHRB Post-Mortem Examination Program. At its August meeting, the Board again discussed its post-mortem examination program established in section 1846.5, Title 4 of the CCR. As it currently exists, the section requires that every horse which suffers a breakdown on the racetrack in training or in competition, and is destroyed, and every other horse which expires while stabled at a racetrack under CHRB's jurisdiction, shall undergo a post-mortem examination to determine the injury or sickness which resulted in euthanasia or natural death. The exam must be conducted by a licensed veterinarian employed by the owner or trainer of the deceased horse. Test samples must be obtained from the carcass and sent to a laboratory approved by the Board for testing for foreign substances or their metabolites and natural substances at abnormal levels; these results are forwarded to CHRB.

At its April 1990 meeting, CHRB held a public hearing on proposed amendments to section 1846.5, which it hoped would enhance compliance with the post-mortem examination requirement. Due to a lack of facilities at racetracks in which to perform complex post-mortems, the rule has proven unenforceable. As published, the proposed



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amendments would have required the post-mortem to be conducted at Board expense at a Board-designated diagnostic laboratory; the Board would have financed the costs of the program through owners' license fees. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 203 for background information.) Due to opposition to this financing mechanism, the Board subsequently dropped it from the proposed amendments; the Board also added a sunset clause to the provision, ending the pilot program on June 30, 1991. Following a 15-day comment period ending on June 1, the Board submitted the proposed regulatory change to the Department of Finance (DOF); DOF returned it, however, because the Board had not budgeted funding for the program. Thus, at this writing, CHRHB has not yet submitted this proposed regulatory change to OAL and OAL has not yet approved it.

At its August meeting, CHRHB discussed its 1990-91 budget. The Board expects to save \$294,000 by contracting with Harris Laboratories to perform its drug testing instead of Truesdail Laboratories (*see infra* for further discussion), and voted to allocate \$158,000 of that sum for implementation of its post-mortem examination program during 1990-91. Executive Secretary Hutcheson noted that Section 28 of the Budget Act requires the Board to notify and receive the approval of DOF and the legislature for any redirection of funds in excess of \$100,000 for expansion of existing programs or development of new programs. Thus, CHRHB must not only secure OAL approval of the amendments to section 1846.5, but must also submit a Section 28 request to DOF in order to lawfully implement the post-mortem examination program.

Entry of Claimed Horses. On September 6, CHRHB submitted to OAL its proposed amendments to section 1663, Title 4 of the CCR, regarding the entry of claimed horses. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 203 and Vol. 10, No. 1 (Winter 1990) p. 148 for background information.) On September 13, OAL approved the proposed amendments, which became effective October 9.

Test Samples. On June 22, CHRHB unanimously adopted proposed amendments to sections 1858 and 1859, Title 4 of the CCR, relating to drug test samples. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 203 for background information.) The proposed amendment to section 1858 reduces the number of test samples taken from race horses; the proposed amendment to sec-

tion 1859 specifies that all urine samples not found by the official laboratory's screening tests to contain a stimulant, depressant, local anesthetic, or narcotic substance, whether natural or synthetic, or a metabolite or analog thereof, shall be discarded immediately. On August 23, OAL approved these proposed amendments.

Horsemen's Split Sample. Also on June 22, CHRHB unanimously adopted proposed section 1859.25, Title 4 of the CCR, regarding the horsemen's split sample drug testing program. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 203 for background information.) On August 1, CHRHB submitted the proposed section to OAL for approval. On September 7, OAL rejected the proposed action on grounds that the necessity, consistency, and clarity standards of Government Code section 11349.1 were not met, and because CHRHB failed to comply with procedural requirements of the APA. This proposal has been re-referred to committee for revision.

Blocking of Legs and Ankles. CHRHB is currently drafting a proposed amendment to section 1847, Title 4 of the CCR, which would prohibit the blocking of horses' legs and ankles. The Board proposes to define the procedures which will be considered "blocking" (a procedure under which, by some means, a horse is desensitized to pain in the leg, ankle, or hoof). Blocking can cause a horse to break down during a race or workout because it is forced to run on an injured limb. Due to the serious danger blocking poses to the horse and jockey, the Board's amendment will authorize permanent license revocation for any trainer whose horse is found to have been raced with a blocked leg or ankle.

Wagering Prohibition Amendments Submitted. In September, CHRHB submitted to OAL its revised amendment to section 1669, Title 4 of the CCR, which prohibits satellite wagering facility supervisors and assistant satellite wagering facility supervisors from wagering on the results of a race while on duty at a race meeting or satellite wagering facility. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 203 and Vol. 10, No. 1 (Winter 1990) p. 147 for background information.) At this writing, the proposed amendment is awaiting approval from OAL.

Entries and Declarations Regulatory Amendment Proposed. On June 8, CHRHB noticed its intent to amend section 1630, Title 4 of the CCR, to clarify the procedures for the declaration of a horse from an overnight stakes race. At a July 26 public hearing, the Board adopt-

ed the proposed amendment; at this writing, the rulemaking package is awaiting approval from OAL.

Other Regulatory Changes. On August 3, CHRHB published notice of its intent to amend section 1486 and adopt sections 1486.5 and 1481(i), Title 4 of the CCR. Currently, every license granted by the Board expires on the 31st day of December of the expiration year; the Board permits a grace period until February 15 to renew the previous year's license, during which time the previous year's license is valid. The proposed amendment to section 1486 would change the expiration date from December 31 to coincide with the licensee's birth month, thereby making the expiration date the last day of the birth month of the licensee in the year in which it is issued, and the license would be automatically extended in its term to expire on the last day of the birth month of the licensee in its third year. This change is designed to eliminate the backlog of work that occurs every December 31, due to the excessive number of CHRHB licenses which expire.

Proposed new section 1486.5 would set the term of registration for Stable Name, Syndication, Partnership, Multiple Ownership Authorized Agent, or Trust as granted by the Board. Under this section, the registration would be valid for three years and would expire on the 31st day of December of the expiration year.

Proposed new section 1481(i) (Occupational Licenses and Fees) would state that the date payment of the required licensing fee is recorded by the Board shall be the effective date of issuance of a continuous occupational license for the capacity in which licensed. The fees required would be for the entire period for which the issued license is to be valid.

On September 28, the Board held a public hearing on these proposed changes, and adopted the proposed amendments. At this writing, CHRHB is preparing the rulemaking file for submission to OAL.

Lasix Seminar. During the summer, CHRHB proposed to sponsor a nationwide seminar on the controversial drug furosemide—a diuretic given to bleeders and known best by its trade name Lasix. CHRHB hopes that veterinarians, chemists, trainers, owners, racing commissioners, turf writers, and patrons will attend and participate in the open discussions, which were proposed partly in response to recent conflicting reports as to the use of this drug. One study released in May concluded that furosemide actually increases the speed



of some horses who do not suffer from "exercise-induced pulmonary hemorrhage." However, in July, the Arizona Department of Racing released a bleeder study in which it concluded that Lasix does not enhance the performance of a racehorse.

In June, CHRB announced that it would not be taking any immediate action regarding the Lasix issue; but would rather examine the facts and determine the course which "will best serve the interests of the horse, the industry and the public." A scheduled November date for the Lasix seminar was cancelled; CHRB expects to reschedule it in the near future.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 204-05:

AB 2671 (Floyd), as amended August 16, would have revised and recast the provisions of law relating to CHRB's authority to license and regulate stewards and racing officials; repealed the current requirement that when satellite wagering facilities are receiving a live audiovisual signal of a horse racing meeting, CHRB must designate a steward at the track where the meeting is being conducted to monitor the satellite wagering facilities at the track and at all facilities receiving the signal; and required CHRB to set forth requirements for the position of satellite facility supervisor for all satellite wagering facilities operated by the state or on public land. This bill was vetoed by the Governor on September 25.

AB 3026 (Floyd), as amended August 28, would have required, with respect to harness racing meetings conducted after July 1, 1991, that revenues collected from license fees in each calendar year that are in excess of those collected in the 1989 calendar year be distributed equally to the racing associations as commissions, to the horsemen as purses, and to the state as license fees. This bill was vetoed by the Governor on September 30.

AB 3027 (Floyd), as amended August 28, requires that 90%, instead of all, of the redistributable money in a parimutuel pool from unclaimed tickets be distributed 126 days, instead of 120 days, after the close of the meeting; and that 140 days after the close of the meeting, any remaining redistributable money is to be distributed equally between CHRB and the horsemen's welfare fund. This bill was signed by the Governor on September 24 (Chapter 1283, Statutes of 1990).

SB 1824 (Maddy). Existing law requires that, from horse racing revenues received by CHRB, pursuant to designated provisions, \$265,000 plus an amount equal to 1% of the gross amount of money handled in the annual parimutuel pool is to be paid into the Fair and Exposition Fund. This bill requires that the percentage to be deposited in the Fund be based on the gross amount of money handled in the annual parimutuel pool generated within this state, or the maximum amount received by the state from the parimutuel pool of a racing meeting held in this state, whichever is less. This bill was signed by the Governor on August 7 (Chapter 471, Statutes of 1990).

SB 1974 (Maddy), as amended August 27, authorizes a horsemen's organization which represents horsemen participating in a racing meeting and a racing association to enter into an agreement which provides for the division and sharing of the interest earned on the association's paymaster accounts by the organization and the association, if certain conditions are satisfied. This bill also deletes an existing provision which requires that the amount to be distributed as purses or commissions for any fair racing meeting or mixed breed racing meeting be based on the respective parimutuel pools during the previous corresponding meeting. This bill was signed by the Governor on September 30 (Chapter 1609, Statutes of 1990).

AB 170 (Floyd), which requires CHRB to include in its annual report a tabulation of injuries, fatalities, and comparative accident rates for all racing and training venues in California, was signed by the Governor on September 22 (Chapter 1259, Statutes of 1990).

SB 519 (Maddy), as amended August 27, authorizes CHRB to adopt regulations to allow the entry of thoroughbred horses and Appaloosa horses in quarter horse races at a distance not exceeding five furlongs at certain meetings. This bill was signed by the Governor on September 29 (Chapter 1481, Statutes of 1990).

The following bills died in committee: **AB 2546 (Clute)**, which would have raised the amounts distributed as purses to 46% in 1991, 47% in 1992, 48% in 1993, 49% in 1994, and 50% in 1995 and thereafter, and would have made corresponding reductions in the amounts distributed as commissions during each of those years; **AB 2676 (Floyd)**, which would have authorized an association to revise the estimate for the aggregate handle during a meeting if CHRB determines that the revision is necessary; **AB 2680 (Floyd)**, which would have

required CHRB to adopt amenity standards for satellite wagering facilities, and would have required those facilities to provide, as a condition of licensure, accommodations which meet those standards; **AB 2706 (Floyd)**, which would have required CHRB to develop and maintain a "California Racehorse Registry" for the purpose of registering all racehorses, and would have required CHRB to charge the owner of the racehorse a fee to register a racehorse; **AB 2826 (Floyd)**, which would have created the California Horseracing Industry Commission, which would have been responsible for promoting the horse racing industry and for conducting market research related to horse racing; **AB 3025 (Floyd)**, which would have required CHRB to allocate racing days to associations on the basis of quantifiable assurances from breeders' organizations that a sound, healthy inventory of racehorses is available to meet the needs of the racing meetings; **SB 2127 (Maddy)**, which would have required that a post-mortem examination be conducted on every horse which is destroyed after suffering a breakdown on a racetrack while in training or in competition, and every other horse which expires while stabled on a racetrack, to determine the injury or sickness which resulted in euthanasia or natural death; **SB 2624 (Maddy)**, which would have authorized CHRB to license three racing theaters, as pilot projects, to conduct wagering on horse racing meetings held in the state; **SB 593 (Maddy)**, which would have required that, from the revenue received by CHRB, an amount equal to five-tenths of 1% of the amount of money handled in the annual parimutuel pool from wagers at the racetrack where the racing meeting is being conducted, be distributed to the Equine Research Laboratory at UC Davis for an equine drug testing laboratory; and **AB 216 (Floyd)**, which would have prohibited the administration by any means of any medication or drug substance to a horse entered to race in a horserace, except as specified.

RECENT MEETINGS:

At its May 24 meeting, CHRB decided not to renew its drug-testing contract with Truesdail Laboratories of Tustin. At the recommendation of its Medication Committee, the Board decided to award the contract for its regular drug testing program to Harris Laboratories; the contract for its complementary drug testing programs was awarded to the Pennsylvania Equine Toxicology and Research Laboratory.

At its June 22 meeting, CHRB approved in concept a proposal to con-



struct a racetrack in Riverside County, which would be operated by the Golden Empire Racing Association. It is estimated that the new facility, which would conduct quarter horse and harness racing, could handle annual wagering of approximately \$120 million.

Also at its June 22 meeting, Chairman Chavez directed staff to document when a horse tests positive for high levels of Butazolidin; this documentation will assist CHRB and its staff in identifying trainers who may be over-medicating their horses.

Also at its June 22 meeting, the Board authorized staff to enter into an Interagency Agreement with UC Davis for the services of CHRB Equine Medical Director Dr. Rick Vulliet. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 131 for background information.)

At its July 26 meeting, CHRB concluded its nationwide search for a new Executive Secretary to replace Leonard Foote, who retired in April after serving fourteen years as CHRB's Executive Secretary. After considering 42 applicants for the \$74,500-per-year position, the Board selected Acting Executive Secretary Dennis Hutcheson as new Executive Secretary. Hutcheson served as Assistant Executive Secretary under Foote since 1988.

At the August 24 meeting, the Board approved a simulcasting agreement between Bay Meadows Racing Association and the California Exposition and State Fairs.

FUTURE MEETINGS:

To be announced.

NEW MOTOR VEHICLE BOARD

Executive Officer: Sam W. Jennings
(916) 445-1888

Pursuant to Vehicle Code section 3000 *et seq.*, the New Motor Vehicle Board (NMVB) licenses new motor vehicle dealerships and regulates dealership relocations and manufacturer terminations of franchises. It reviews disciplinary action taken against dealers by the Department of Motor Vehicles (DMV). Most licensees deal in cars or motorcycles.

NMVB is authorized to adopt regulations to implement its enabling legislation; the Board's regulations are codified in Title 13 of the California Code of Regulations (CCR). The Board also handles disputes arising out of warranty reimbursement schedules. After servicing or replacing parts in a car under warranty, a dealer is reimbursed by the man-

ufacturer. The manufacturer sets reimbursement rates which a dealer occasionally challenges as unreasonable. Infrequently, the manufacturer's failure to compensate the dealer for tests performed on vehicles is questioned.

The Board consists of four dealer members and five public members. The Board's staff consists of an executive secretary, three legal assistants and two secretaries.

MAJOR PROJECTS:

Proposed Regulations. At an October 17 public hearing, NMVB was scheduled to consider several proposed changes to its regulations in Title 13 of the CCR, to restructure the manner in which fees are charged of dealers, manufacturers, distributors, and representatives subject to the jurisdiction of the Board. These fee adjustments are mandated by AB 1104 (Torres) (Chapter 193, Statutes of 1989), which requires that NMVB licensees be charged fees sufficient to fully fund the Board's activities. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 132 for background information on AB 1104.)

Currently, the Board collects \$200 annually from every applicant seeking issuance or renewal of a license as a new motor vehicle dealer, dealer branch, manufacturer, manufacturer branch, distributor, distributor branch, or representative, paid to the DMV in behalf of the Board. The proposed regulatory amendments will increase that annual fee to \$300 for new motor vehicle dealers and dealer branches, while eliminating the flat fee requirement for manufacturers, manufacturer branches, distributors, distributor branches, and representatives.

Instead, the proposed amendments would assess an annual fee of \$0.45 per vehicle distributed by manufacturers and distributors which are in turn sold, leased, or otherwise distributed in the state. Unlike the flat fee above, this fee is to be paid directly to the Board. Manufacturers and distributors will also be required to file a written statement on or before May 1 of each year to enable the Board to calculate the fee to be charged. Where this statement is not submitted, the proposed regulations suggest a system of accounting by reviewing the new motor vehicle registration records of the DMV.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 205-06:

AB 3515 (Bane), as amended August 22, requires substantial justification for

the failure to comply with discovery procedures associated with a hearing on a petition to terminate a franchise, and authorizes the secretary of the Board to require a party who fails to comply with discovery procedures, authorized by the Board, to pay the attorneys' fees and costs of the party who successfully makes or opposes a motion to compel enforcement of discovery. This bill was signed by the Governor on September 25 (Chapter 1325, Statutes of 1990).

AB 3796 (Bane). Existing law, with specified exceptions, makes residence addresses in the records of the DMV confidential, and restricts the release of mailing addresses in those records. As amended August 9, this bill exempts from those provisions, under specified conditions, licensed vehicle manufacturers and dealers, and persons who provide advance adequate written assurance that the information will be used solely for statistical research or reporting purposes. This bill was signed by the Governor on September 30 (Chapter 1635, Statutes of 1990).

The following bills died in committee: *AB 2604 (Moore)*, which would have provided that, in addition to any other right to revoke an offer or rescind a contract, the buyer of a motor vehicle has the right to cancel a motor vehicle contract or offer, as specified, until midnight of the first business day after the day on which the buyer signs a motor vehicle contract or offer which complies with specified requirements; and *AB 3190 (Tanner)*, which would have required a specified disclosure to the buyer of a new vehicle by both the manufacturer and the dealer regarding the ability of the vehicle to be operated with tire chains.

FUTURE MEETINGS:

To be announced.

BOARD OF OSTEOPATHIC EXAMINERS

Executive Director: Linda Bergmann
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In 1922, California voters approved a constitutional initiative which created the Board of Osteopathic Examiners (BOE). Today, pursuant to Business and Professions Code section 3600 *et seq.*, BOE regulates entry into the osteopathic profession, examines and approves schools and colleges of osteopathic medicine, and enforces professional standards. The Board is empowered to adopt regulations to implement its enabling legislation; BOE's regulations