

# MINUTES

## OREGON RACING COMMISSION

March 25, 2004

The Oregon Racing Commission met on March 25, 2004, at 1:30 p.m. in the Turf Club at Portland Meadows located at 1001 N Schmeer Road, Portland, OR. Commissioners in attendance were Steve Walters, Chair, Lisa Metcalf and Jeff Gilmour. The governor has appointed an individual for the remaining commissioner position, but she will not begin serving until the April meeting. Agenda items were discussed in the following order with resulting actions:

### 1. Approval February 19, 2004 Minutes

ACTION: MOTION (Metcalf): Minutes are approved as submitted

VOTE: 3 Aye, 1 Excused, 0 Nay

### 2. Eastern Oregon Livestock Show 2004 Race Meet Application - June 11, 12 and 13

Jodi Hanson, ORC: presented the application. Requesting race meet on pre-approved dates of June 11, 12, 13. Application is complete except for a plate inspector to be announced and requesting that Bute and Lasix be used. Purses are very good.

ACTION: MOTION (Gilmour) Approved with authority to delegate to Executive Director approval of officials

VOTE: 3 Aye, 1 Excused, 0 Nay

### 3. Crooked River Roundup 2004 Race Meet Application - July 7, 8, 9 and 10

Jodi presented the application. Requesting race meet on pre-approved dates of July 7, 8, 9, 10. Requesting the use of Bute and Lasix and have a couple of officials that have not been appointed yet such as plate inspector, patrol judge, association veterinarian, and assistant racing secretary. Purses are very good. Commissioner Gilmour points out that they are actually asking for Bute but there is no mention of Lasix. Discussion assuming they meant to mention both, but Chair Walters thinks Lasix doesn't have to be approved. Deputy Steward Jim Smith concurs.

ACTION: MOTION (Gilmour) Application approved and use of Bute and Lasix approved, with authority to delegate to Executive Director approval of officials

VOTE: 3 Aye, 1 Excused, 0 Nay

### 4. Tillamook County Fair 2004 Race Meet Application - August 12, 13 and 14

Jodi presented the application. Requesting race meet on pre-approved dates of August 12, 13, 14. Requesting the use of Bute and Lasix and have a couple of officials that have not been appointed yet such as plate inspector, patrol judge. They have very good looking purses and Pig-n-Ford races.

ACTION: MOTION (Metcalf) Application approved, with authority to delegate to Executive Director approval of officials

VOTE: 3 Aye, 1 Excused, 0 Nay

### 5. Harney County Fair 2004 Race Meet Application - September 11 and 12

Jodi presented the application. Requesting race meet on pre-approved dates of September 11 & 12. Requesting the use of Bute and have a couple of officials that have not been appointed yet.

ACTION: MOTION (Gilmour) Application approved and use of Bute and Lasix approved, with authority to delegate to Executive Director approval of officials

VOTE:

3 Aye, 1 Excused, 0 Nay

**6. Multnomah Greyhound Park 2004 Race Meet Application – May 1 through October 9**

Jeff Grady: They cut back on the race days from 5 to 4 and cut back on the Kennels to try to increase purses. With fewer greyhounds running there's actually more money going to less people. They have a business and marketing plan in place. Opening day is May 1 with a special 2:00 post because the Derby is running at 3:04. They will have 4 races, then break ½ hour for the Derby, then continue on until about 4:30. There will then be another break for weigh-ins during which time there will be a band and a BBQ. They will continue with another 9, possibly 12 races that evening. Should be a big opening day.

Jodi questioned Jeff about the point structure and how points are assigned. Wants to clarify because OGA is setting up a purse account this year. Julie Delcamp explained that last year they enhanced their points in the distance races trying to attract more distance dogs, but it didn't really work and actually the purses during the Derby eliminations and Rosemary Long eliminations were diluted greatly. Have now returned to their 2002 point schedule which they have used for 5 years. Jodi asks for clarification with how dollar value will be assigned this year to the points and the new change with the OGA account.

Julie says this year the money that has gone to purses has been split up. Greyhound monies have gone directly into purses and simulcast monies went into a separate account for the OGA and then they supplemented purses that way. This year it will all be put into an account run by the OGA in conjunction with MGP and there will be a committee that meets weekly to determine the number of races, the number of points and what the point value will be. Point value target will be between \$50 - \$60 per point.

Chair Walters asked Jeff about their plans to sell their signal to Euro Off-Track and if the money will be put into a non-merged or merged pool. Jeff said they will all be merged pools and that Euro Off-Track may have been a mistake. Magna has Off-Tracks that they are operating in Austria and it will go through the Maryland Jockey Club. They will be using the Austria/Maryland Jockey Club. Walters asked about another company in the application – Racing Services Inc. – which last he heard was going out of business and people were going to jail. Jeff says they handle one of the Indian Casinos here in Oregon and Magna is still getting checks from them. Not sure if they will be selling the signal to them after all. Walters clarifies that everything is subject to contracts being approved by the Executive Director if they delegate authority to her. The Starter has yet to be approved. Commission will need to delegate approval authority on that to Jodi, as well as authority on the approval of exports and recipient of signals that would be brought in. Any OTB contracts would also need to be approved by Jodi with recommendation on a bond. Jodi recommends that the bond stay at the current level of \$225,000. Chair Walters noted that he would approve of Magna selling the signal to Euro Off-Track if they want to propose selling the signal there.

**ACTION: MOTION (Gilmour)** Motion to approve application with the delegations to Jodi as discussed.

VOTE:

3 Aye, 1 Excused, 0 Nay

## OLD BUSINESS

### **7. Portland Meadows Race Meet Report**

Jeff Grady: The last couple of week's fields have been short with 4 -5 scratches right up at the gate. They are losing horses as anticipated. Have 720 currently on the grounds, not sure how many are on the vet list. Last week had to cancel a stakes race. This is hurting their purse account. YTD down \$480,000 with 3 less race days due to cancellations, export is up \$5.6 million, simulcast handle is down \$1.6 million. Some of that is due to the foul weather experienced in January but not all of it. OTB's are down in handle and they are trying to address that. A lot of the money is going online to their Hubs. February live handle was down 19% and March was down as well. Last Saturday started interactive dinner theatre for every Thursday and Saturday.

Jeff addressed the recent track issues and reminded everyone that they have Track Committee meetings. They had Dick Eagle laser grade the track in late August and by November had silt so brought Dick back, dug it up, removed the silt and replaced with sand. Jeff let go two track employees and rehired the track Superintendent from last year. Jeff urges everyone concerned to go to the HBPA and be present during Track Committee meetings. Idle complaints are not helpful; Magna must be made aware of the situations.

Chair Walters noted that he was out on the backside last week and had passed along to Jodi comments he heard regarding silt on the track. He had also heard about the possibility of getting a bigger blade and Jeff confirmed that they are considering that as well as purchasing a grader. Readings are being done on the track once a week to track the conditions.

Commissioner Metcalf asked what the issues are that Magna is facing on the track at this point and when the track committee meetings are. She noted that there is obviously some unrest based on the number of people in attendance at the meeting. Jeff said there were several meetings early on in the meet and the last one was last Wednesday, with another one next week to address the issues including unevenness of the track and silt. Jeff asked people to present any additional issues that have not yet been discussed. Chair Metcalf also called for some testimony to get issues on the record. Her biggest concern is that the kill rate seems to be on the rise. She looked at several tracks to see how they compare with Portland Meadows and how they handled their situations. The common thread seems to be the weather and the conditions on the track. She called for everyone to be very aware and act quickly when the track conditions are in question.

Dr. Kennedy mentioned that holes are occurring in the track and with the current equipment situation they are not getting filled in. During the deep part of the winter they had a problem with fractured sesamoids. That has changed and the track hardened up, but now there are sore feet and knee problems. At the meeting last week the decision was made to dig up the track in order to level it out and fill in the holes. May drop the teeth on the floats to fill in the holes. In a silt situation there's not much force dissipation when you hit a rock-hard bottom and if it's uneven you're looking at a much more serious problem. This had caused a huge problem. Dr. Kennedy credits Mr. Grady with trying to fix the situation but it just hasn't worked.

Commissioner Metcalf said that when Magna first resurfaced the track the kill rate dropped to lower than it has ever been, then asked why is it happening again 18 months later? Is it a maintenance issue? Dr. Kennedy thinks 18 months might be as long as the sand will hold. He suggests digging up the track and trying much denser sand. There have been a variety of different injury types that have changed with the track conditions over the last 5 months. There used to be more catastrophic injuries but after digging up the track they are having muscle soreness, which is not great but much better.

Dick Cartney recounted a conversation with Dick Eagle and Commissioner Gilmour that after examining the track Mr. Eagle did not feel that it needed to be resurfaced so they did not move forward with that. Dick encouraged the trainers and riders to tell them about any issues they face so their concerns can be addressed. He feels that everyone is trying to do the right thing but sometimes it's hard to know what to do to fix the problem. He thinks toward the end of the season the track naturally gets compacted by horses and equipment and mentioned several other issues that he feels Magna is working on. Resurfacing might need to be considered before next year or possibly sooner. He noted that management has always been cooperative.

Dan Canory (Golden Gate Fields and Portland Meadows): Commented that they have never taken the lip off of the race track and have never used a laser blade. He said the track was bladed last summer and hasn't been done since then except with a small blade. The water sits and the center of the race track and that is causing the holes. Suggests cutting the lip off, using a laser blade and have them flatten it all out. They do it every day at Golden Gate Fields. He asked Portland Meadows to get someone up here from Golden Gate Fields to blade the track but his request was denied.

Eula Bishop: Jeff commends Eula for being the only person who came to him directly with issues about the track. Both Jeff and Chair Walters remind the group again that management needs to know about the problems in order to address them. Eula says she's never had as many breakdowns in her 20 years on the track as she has this year. Some of them had to be put down, some turned out, some given away and owners can't afford to lose horse like that. Several years ago the track was the best when it rained hard. You didn't even have to wash off your horses, just brush them out. Now the mud and silt stick to them and the problem is the track. Breakdowns will happen occasionally but not like this. She suggests taking the track down to the bottom and adding much more sand. We started a good year with people from Emerald Downs and she's hearing them say they won't come back.

Juanita Jones: Agrees with Eula. Feels that the track is dead. A hard track is too difficult on a horse that already has a problem. They can't count on any consistency in the track surface. When you send a horse out you never know if you'll get him back and it's been this way for most of the meet. She feels that resurfacing is the only solution.

Leroy Twigg: Usually has 15 – 16 horses a year and now can't get halfway through the meet and still have a sound horse in his barn – Quarterhorses and Thoroughbreds. He feels the track needs to use a better grade of sand.

Jim Keen: Been racing in Oregon for over 50 years. This year had 38 head to start with and now has 19 head, had to put one down and given several away. Everyday he gets more sore horses. He thinks the surface on the racetrack is bad. Back in the 70's they put new surfacing on and it was the best racetrack in the United States but has gone downhill from there. He feels the biggest problem is that the water doesn't drain off the track.

Chair Walters thanked everyone for taking the time to comment. Walters asked Jeff Grady to please comment at the next Commission meeting about the progress that has been made. Again urges people to attend the Track committee meetings.

#### **8. Request by Portland Meadows to Revisit Make Up Race Dates**

Portland Meadows left two race days open at the end do the season - Monday the 19<sup>th</sup> and Friday the 23<sup>rd</sup> – in anticipation that there would be foul weather. The way the season is going, and after the previous comments about the track, Jeff request that they not run those dates (and one additional date) after all. They don't have enough horses and April will be worse. There are 720 horses on the grounds right now and many on the vet list or not running, and they don't have money in the purse account. Lost a little ground with the purse account 2 weeks ago with the extra day and this week it's even. He feels with 3 – 4 horse fields, no trifecta and show wagering it's going to be worse and will end the season on a bad note. It will undermine all the work they did to send their signal and he's afraid it will be tough to get them back with such small fields. One stakes race they had to cancel last week was made up this week which will send the purse account into deficit. Jeff is officially requesting not to run the make up dates.

Chair Walters asked if Jeff had run this by the HBPA and Quarter Horse Association – he has but no unanimous consent. They all thought the extra days would be a good idea but the one they've had already just sent the next two weeks into disarray because there simply aren't enough horses to run (end of tape). Chair Walter acknowledged that Jeff raised legitimate concerns but also feels that since the make up days were asked for and granted, given the statutory requirements he is reluctant to change that decision unless there is agreement among the stakeholders including the horsemen. Suggests delegating to Jodi the ability to scratch dates based on consensus with the horsemen.

Commissioner Gilmour was at the track recently and notes that there is a remarkable difference on the tote board between an 8 horse field and a 4 horse field, so he agrees that small fields are a negative. He was hoping for a unanimous decision as well, but would be willing to delegate that final decision to Jodi as previously suggested by Chair Walters. Commissioner Metcalf agrees.

**ACTION: MOTION (Gilmour)** Delegate to Jodi the ability to allow particular make up days not to be run if some consensus can be reached with the Horseman groups or if races cannot be filled.

**VOTE:** 3 Aye, 1 Excused, 0 Nay

#### **9. Amendment to Operations Plan of Oregon Hubs US Off-Track and America Tab**

Request has been withdrawn by America Tab and US Off-Track. Withdrawing it for the time being, but they may bring the proposal back again

when they have a specific track that they would like to run rather than a general amendment to the operating plan.

Chair Walters observed that the discussion over these proposed amendments has been very healthy for the industry. He has some concern about some of the rhetoric where people have made claims that are not necessarily true and would like to see everyone keep it civil in the future. We shouldn't "build a wall" around our markets and signals as opposed to seeing how we can compete more effectively in a global market. He thanked US Off-Track and America Tab for bringing the issue before the Commission.

#### **10. Further Discussion on Josephine County Fair Request of Tier 2 Hub Distribution**

All Westhoff: Two meetings ago he asked the Commission for funds to add dirt to the track. He explained to Commissioner Gilmour that there is a timing problem because of the weather and equipment availability. Mr. Westhoff will be bringing up a rock picker to go over the track once the dirt is down.

Commissioner Gilmour asked Mr. Westhoff about his purse schedule for this year. It is \$2,000 per race – the Hub funds. There was some discussion about if the purses need to be \$2,000 PER RACE of \$2,000 AVERAGE per race. Commissioner Gilmour states clearly that it must be \$2,000 PER RACE minimum, not average. Commissioner Gilmour also asked where the purse money came from before the Hub funds were available and where it goes now that it's not being used for purses anymore. Mr. Westhoff said it came from the wagers and that money now goes to payroll and track maintenance. Their biggest expense is over \$120,000 in labor. Commissioner Gilmour confirmed that the accounting of Josephine County Fair is auditable by the Commission. Commissioner Gilmour notes that the majority of the county fair meets have purses that are larger than the allotment per race of the Hub allocations, and wants to know why Grants Pass doesn't follow suit. Mr. Westhoff says they can't afford to do that. The HBPA has been helped them out in the past. Their net gain showed them making less than \$3,000 last year.

Commissioner Gilmour asked Mr. Westhoff where the purses came from 6 years ago before the HBPA gave assistance, but he didn't have his financial statements and tried to quote a few items from memory. Commissioner Gilmour emphasizes that the Hub fund allocations are intended to help raise purse accounts and JCF purses this year have now slipped from \$2,500 last year to \$2,000 this year. Mr. Westhoff apologized for the low purses but noted that if they had to make up that \$500 difference on each race it would come to \$90,000 and there would be no way they could run. He agrees that the bigger the purse the better off they all are.

Commissioner Gilmour says he plans to attend summer circuit this year to help get the community involved in adding to those purses. He feels there is a golden opportunity to match Hub fund with local involvement, perhaps naming a race after local people to draw them to the track. Commissioner Gilmour feels that the counties and Mr. Westhoff are not working hard enough to do this. Mr. Westhoff detailed some of the efforts they have made including selling blankets and some other programs. He feels they contribute to the community significantly through job creation and notes that he gets no county funds of any kind. Commissioner Gilmour asked Mr. Westhoff to relay his feelings to Rod Lowe.

Chair Walters suggested they finish the discussion on the dirt. Should be done the next Tuesday or the 15<sup>th</sup> depending on the weather.

ACTION: MOTION (Gilmour) Motion to provide the money for the dirt spreading at Grants Pass.  
VOTE: 3 Aye, 1 Excused, 0 Nay

**NEW BUSINESS:**

**11. Request by US Off-Track, LLC to Provide Hub Services for Wyoming Account Wagering**

Ben Hayes: This is a request to provide account wagering services to Wyoming Downs. US Off-Track is offering them a turnkey operation and would be running a Hub out of Oregon and utilizing their services at a call center. The application is before the Racing Commission in Wyoming and is under review. He understands that Jodi has spoken with Frank Lam, the Executive Director for the Wyoming Racing Commission and that they will be meeting next week to give final approval for the contract.

Chair Walters confirmed with Mr. Hayes that Pony Express Bet, LLC dba Pony Up Bet is a wholly owned subsidiary of Wyoming Downs which is the licensee there. He asked if Wyoming Downs has an OTB area – it does not. Also asked if the betting is intended for Wyoming residents – Mr. Hayes says primarily it is, but will also be multi-jurisdictional. Chair Walters asked to hear from Jodi and the other Commissioners as to their feelings about the use of facilities in Oregon without doing other business here and paying appropriate Hub funds and taxes.

Jodi has made inquiries into this. Currently Wyoming is taxing the handle between 3 – 3 ½ %. She feels there is not much widespread knowledge on how the Hub and tote systems work. The benefits we do get as a state are the business taxes and the employment that comes with it. There are collateral benefits. We are currently the experts and she wants us to remain the experts.

Chair Walters is concerned that this may set a precedent that might keep the handle out of Oregon. Doesn't want to set a situation where a Hub in another state that is going to do business in competition with our Hubs can make use of the expertise here and then not pay any tax to the State of Oregon. Chair Walters invited Steve Roden to present his thoughts about this.

Steve Roden: Biggest issue is where the bet is being made. We have declared in Oregon that in order for account wagering to take place everything connected to the bet has to be in Oregon. In the situation that is being suggested, you could argue (1) that it fits in with the Oregon declaration of where the Oregon wager is made, (2) at the track where the calculation is made so there wouldn't be any Oregon wager except what takes place at the track. It muddies it further to license your product in one state and have it taken in another state, counting as the previous states handle. We declared that we weren't going to let Youbet do that by putting their call center in California — that wagers that were called in to California had to be licensed under the California Horse Racing Board and they could use the tote here but the wager would be in California. Now were talking about doing the opposite and applying the wagers to Wyoming. It just muddies the water on where the wager is made.

Ben Hayes: The rule with regard to where the wager is made is an Oregon Administrative Rule with regard to having jurisdiction for disputes with regard to a Hub licensee. With regard to the general law, in the U.S. or globally, the law is where the wager is placed in a pool. With regard to this situation, they are providing a service, with a space, with trained employees. He argues that they are increasing employment in the State of Oregon rather than those jobs being in Wyoming. They will be paying employment taxes on those employees and paying for the services with regard to utilities, communications and so forth. With regard to profits, there will be corporate income tax and franchise fees. Pony Express Bet has the option of coming to Oregon, but they are already a licensee in Wyoming and they want to maintain relationships with the horsemen in Wyoming. They have to option to try to recreate the services offered in Oregon or to outsource them to us. Mr. Hayes feels it's a win/win situation, allowing the Wyoming group to keep their relationships and at the same time increase employment in the State of Oregon. They have the ability and would like to provide those services to them. There may be some companies who may look at the process after a few years and decide to migrate their Hub business to Oregon. Chair Walters confirmed with Ben that US Off-Track would be able to compete in Wyoming as well.

Commissioner Gilmour: Noted that he feels the deal should have been cut with Wyoming for 4% instead of 3 ½%, with a ½% going to Oregon because they are running through here. This may be a direction to consider because Oregon was first in the Hub business. He would like Mr. Hayes to consider that when making future deals.

Chair Walters: Pointed out that he would rather have the services contracted in Oregon than India or some place like that. It makes a big difference to him that they would be able to compete in Wyoming and do business there. We need to monitor this closely, and review the approval when the Hub license is up for renewal (currently this June).

Steve Roden: Agreed that we should support the request because there are numerous other business plans being executed right now involving The Racing Channel and America Tab and how they are bringing in other business. They are all trying different methods and it will be interesting to see which plan works the best.

**ACTION: MOTION (Gilmour)** Approve the request to provide Hub services for Wyoming Account Wagering with the condition that Jodi will build relationships with the Wyoming parties.

**VOTE:** 3 Aye, 1 Excused, 0 Nay

**CONTESTED CASES:**

**INFORMATIONAL MATERIALS AND APPROVALS:**

**12. Confirmation of Next Commission Meeting - April 22, 2004**

Chair Walters will not be able to attend, but all others approve. Meeting will be held at 2:00 instead of 1:30 at 800 NE Oregon Street, Portland, Room 140.

**RULES:**

**OTHER BUSINESS AS MAY PROPERLY COME BEFORE THE COMMISSION:**

**13. Request by America Tab, Ltd. To Amend Operating Plan to Reduce Minimum Allowable Age for Account Holders**

Todd Baker, America Tab: Filed an operating plan amendment to lower the minimum age from 21 to 18 in order to be more competitive with companies outside of Oregon that allow accounts for persons 18 years and older. There is a rule in Oregon that allows for this.

Chair Walters observed that when the Hubs set the age at 21 despite the rule, it was part of a process where they were taking a conservative approach. He would be inclined to approve this request.

ACTION: MOTION (Gilmour) Approve the request as presented.

VOTE: 3 Aye, 1 Excused, 0 Nay

**14. Request by TVG to Institute Rulemaking to Remove or Amend the Sunset Provision in OAR 462-220-0040**

Roger Nyquist, TVG: Asking for relief of the Sunset Provision. Two years in a row they have passed a one year rule, and he is wondering how best to continue. Commissioner Gilmour prefers passing another 1 year temporary rule rather than a permanent one so they can eventually take a more comprehensive look at caps. He wants companies considering doing business in Oregon to be able to know up front exactly how much it will cost them. By extending the temporary rule for one year it keeps that issue on the table, while taking a look at the exceptions that have been made for Ben in Wyoming and for TVG.

Raul Rodriguez: Clarifies for the record that this is not a temporary rule, there are specific requirements for that. Even if the Sunset is being extended for another year – it is still just an extension of a permanent rule.

Commissioner Gilmour addressed the process issue: we need to open it up to rule making. Mr. Nyquist suggested that if the rule was being reviewed anyway a cap could be instituted in this round.

ACTION: MOTION (Gilmour) Institute rulemaking for OAR 462-220-0040

VOTE: 3 Aye, 1 Excused, 0 Nay

**15. Action on Proposed Changes to the Rules of Greyhound Racing Presented at Public Hearing Conducted on March 18, 2004**

Jodi Hanson: The hearing was conducted at 10:00 a.m. on that date and it was mostly housekeeping on some of the rules after the annual review. In general it pertains to having a shorter race meet. The new rule has to do with the travel log which gives a good opportunity to the haulers to track their routes and also protects everyone involved; the animals, haulers, licensees and the Commission. Testimony in favor of these rules came from Dick Guage, Julie Delcamp and Tom Weaver along with a detailed explanation of the purpose for each amendment. (end of tape)

ACTION: MOTION (Gilmour) Adopt the proposed changes as submitted.

VOTE: 3 Aye, 1 Excused, 0 Nay

There being no further business, the meeting was adjourned.