# MEETING MINUTES

*OREGON RACING COMMISSION*
*March 20, 2008*

The Oregon Racing Commission met on Thursday, March 20, 2008 at 1:30 p.m. in Room 1A of the Portland State Office Building located at 800 NE Oregon Street, Portland, Oregon. Commissioners in attendance were Chair Kerry Johnson, Vice Chair Stan Robson, Chris Dudley, Michael Huber, DVM, and Charles Williamson.

Agenda items were discussed in the following order with resulting actions:

**1. Approval of Agenda**

The commissioners had no additions or changes to the agenda.

Chair Johnson introduced the new commissioner, Michael Huber, DVM. Dr. Huber explained that he was employed at Oregon State University as a veterinary surgeon since 1986 and would do his best to serve the constituents, racing, and the needs of the commission.

**2. February 13, 2008 Meeting Minutes**

ACTION: MOTION (Robson) Approve minutes as submitted.
VOTE: 5 Aye, 0 Nay

**3. Portland Meadows Race Meet Report**

Will Alempijevic, Director of Wagering and Guest Services, Portland Meadows, and Jerry Kohls, Racing Secretary, Portland Meadows, were present to answer questions. Information and discussions included the following:

The 2007-2008 Portland Meadows race meet concluded on March 11, 2008. On-track handle was over $29,000 and the OTB network handle was $9,800 for a gross, in state total average per race day of $39,081; a 4% increase compared to last year within the same timeframe.

Export sales were up due to new markets and increases in existing markets for a total of almost half a million dollars. The $531,000 total average handle per race day was a 30% increase over last year's $409,000. All product in state wagering was up 2.75% with a total of 25 million dollars wagered in Oregon at Portland Meadows and the OTB sites.

With fourteen less race days, or a 19% decrease, Portland Meadows' total gross all sources handle was only down half a point.

Portland Meadows ran 583 races in 61 days during the 2007-2008 race meet which included 499 Thoroughbred races and 84 Quarter Horse races. Jim Fergason was the leading Thoroughbred trainer; Scott Raley, the leading Quarter Horse trainer and Joe Crispin, the leading jockey.

This year's total gross purse pay out was a little over 3 million dollars with a daily average of $50,000 compared to last year's 2.5 million gross pay out and a daily average of $43,000; a daily average increase of 17.64%.

⇒ Executive Director Randy Evers stated the need to celebrate the 32% increase in overall handle as a huge success, especially when compared to other tracks across the country that had been having a difficult time. He added that while he'd like to see more increases like that with the in state handle, Portland Meadows seemed to have turned a corner and be headed down the right path. He attributed the success to the relationship established between Portland Meadow's management, the commission and the associations.

**4. Information Forum on Account Wagering, Rebating, and Computerized Robotic Wagering**

Executive Director Randy Evers explained that today's forum was informational and intended to provide an education for the new commissioners and himself, as the new executive director. He stated that the world of account wagering was complex and that he had invited some individuals to come before the commission to provide their knowledge and expertise in the hope that the commission could gain a better understanding of these issues.

The Supervisor of Account Wagering Hubs, Gordon Tallman, provided a history of ADW's in Oregon which began in 1997 when the Oregon legislature passed two bills, one that allowed account wagering and one that allowed multi-jurisdictional hubs. He provided the following information:

The first multi-jurisdictional hub, TVG, was licensed in June of 1999; the second, US Off-Track, in January 2000. That first year of having the two hubs licensed yielded almost 20 million dollars in combined handle with the Oregon hub tax revenue totaling close to $50,000.

In 2001, AmericaTab and Youbet were licensed and the handle quadrupled to $80 million. In 2002, The Racing Channel was the fifth Oregon hub to be licensed and the five hubs combined generated more than $424 million in handle.

While there were no new Oregon hubs licensed in 2003 or 2004, the hub business continued to grow and handle was $830 million in 2003 and $883 million in 2004.

XpressBet and IRG were licensed in 2005 and by the end of 2006, the hub handle totaled over $1.3 billion. In 2007, Churchill Downs Technology Initiatives Company was licensed and also purchased AmericaTab. In the latter part of that same year, Betpad was licensed. With eight hubs licensed in Oregon in 2007, the combined hub handle exceeded $1.5 billion.

In January of 2008, the commission granted two conditional licenses to AmWest Entertainment and Racing 2 Day. Both companies planned to be operational within the next few months. With the closure of IRG in February and the expected launch of the two new companies, there would be nine licensed hubs operating in Oregon by the middle of 2008.

Mr. Tallman also explained that the taxes on all gross mutuel wagering receipts were based on each company's choice of three different formulas pursuant to OAR 462-220-0040 (3).

The guest speakers were introduced by Mr. Tallman, as follows:

1) Don Johnson, who was a former jockey, track operator, regulator, and horse owner, spoke on his experience as a horse player familiar with computer robotic wagering which was also referred to as computer assisted wagering.

According to Mr. Johnson, the track operators, horse owners, trainers and regulators should embrace computer assist wagering (CAW) because of the benefits it could provide. Those benefits included larger pool sizes and an increased number of wagers resulting in increased handle and added revenue for the tracks and horsemen to use for purses. He added that the CAW attracted the younger generation which was important for the future of racing. He stated, "We need to embrace the advances in technology just like the stock market has done. Ignoring technical advancement will only put our industry further behind and alienate the younger market demographic we're trying so hard to appeal to."

Mr. Johnson explained that the computer assisted wager evolved as computer technology advanced and a concept was formed to develop a PC model that could assist a handicapper by analyzing all of the publicly available racing information. The computer, utilizing past performances and other variables such as speed, class, breeding, distance, workouts, postpositions, jockeys, and trainers, etc. and then combined with an analytical mathematical analysis program, could better assist the handicapper in predicting a wager. He pointed out that human intervention was still needed to operate the computers and to make determinations on what variables to use and how much weight to give them. He stated, "There's no black box model out there that just sits on a shelf and operates on its own."

He continued to explain that a computer assisted wager was delivered in the same manner as others wagers that were placed at an OTB, ADW, or any other track outside the host track: The wagers went through a tote system hub to get into the track pool.
Regarding past posting, Mr. Johnson stated that it was currently and always had been a track issue. He stated, "It's an industry issue as to

when wagers are cycled into the track pool and shown to the public. I would strongly suggest that the industry work together in those crucial last two minutes to cycle the wagers to these host track pools quicker, preferably in real time, but I think the five second intervals or cycles will improve the manner in which the public views the information." He added that there was currently no standard set for the intervals, some were 30 seconds, some were 45 seconds.

He invited the commission to come up with a way to help create definitions, procedures and protocols for computer assisted wagering. "Tell us how you want it done and we'll do our best to create models or programs that conform with whatever the rules are."

> ⇒ In response to Commissioner Williamson's question as to whether the computer places the bet, Mr. Johnson responded, "A computer is assisting in the development side of the wager and then it dumps it off to the delivery side. It can be a computer, but there are actually people that are operating the computer. It's like saying that a diesel truck can go down that highway because it has a computer brain operating the engine, that it can just truck down the highway on its own. It's not realistic that that can happen."
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> Commissioner Williamson explained that he was concerned about the possibility that a race could be underway and suddenly the odds changed drastically because of a lot of computer assisted wagers. Mr. Johnson responded that the ORC, in creating guidelines and procedures, could set the standard for when the bets had to be in, adding that it should be the same for everyone.
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> ⇒ In response to Chair Kerry Johnson's question, Mr. Johnson estimated that the CAW player was wagering between $50-150 million.

2) Nelson Clemmons, the CEO of AmWest Entertainment, a horse owner and breeder, and a member of the advisory committee on account wagering for the Kentucky HBPA spoke on advanced deposit wager rebating. Mr. Clemmons described rebating as a reward similar to what a person might receive when using a credit card, signing in at a hotel or booking a flight. The rewards were provided as an incentive to get the customer to increase activity. He explained that the rebate came from the part of the takeout that remained after the contract track fees and the operating expenses had all been paid.

He stated, "Rebating is and can be a constructive and attractive incentive for our industry wagering and revenue growth if it's managed, monitored and regulated effectively."

Mr. Clemmons indicated that AmWest Entertainment had successfully accomplished that by creating a business model that required the following:

a) State racing commission regulation (On-shore companies).
b) Payment to the horsemen in the state where operating.
c) Payment of a daily licensing fee.
d) Source market fee agreements.
e) Company transparency: Clemmons explained that they provided the following: a terminal that allowed the wagering activity to be viewed at any time; an enhanced player tracking system in addition to the tote reports; and audited financial statements.
g) Bank accounts located in the state where operating.
h) Background investigations and credit reports performed on all players whether international or domestic and an attorney opinion letter validating all background info must be included.

⇒ In response to Commissioner Williamson's questions, Mr. Clemmons further explained the following: The rebate came from the remaining profits after the track rate and expenses had been paid; the rebate paid out to the player was based on how much he'd played, not on how much he'd won or lost; the amount the player received was determined by a previously negotiated and approved contract.

⇒ When Executive Director Evers asked if he would agree to a cap on the rebates, Mr. Clemmons responded that he would because he felt that in the process of bringing the tracks, horsemen and players together to determine what each should receive, the cap would be set.

3) Scott Daruty, President of TrackNet Media, spoke on rebating. Mr. Daruty stated that Track Net Media was a joint venture between Magna Entertainment and Churchill Downs that was formed a year ago to act as a buying and selling agent of simulcast signals for 18 tracks. TrackNet sold the signals to other tracks, OTB's, casinos, account wagering companies and rebating companies.

Mr. Daruty explained that an account wagering customer was a player who gave money to an operator to hold until that player was ready to place a bet. The bet could then be placed either by phone or by computer. Because TrackNet Media viewed rebating as a sub-category of account wagering, they differentiated the account wagering company to a rebating company based on the pricing agreement with the race tracks and not by what might be paid to the customer.

Mr. Daruty stated, "We have a general pricing policy for account wagering companies that when we sell our signals to an account wagering company, we charge between five and eight percent as a host fee depending on whether they're buying Churchill Downs or some other race track. We also require the account wagering company to pay a seven percent source market fee if they're in the source market of one of our race tracks. And, we also ask them to pay a television fee in the amount of approximately two percent to help cover the cost of the HR TV broadcast and distribution of television. We feel that all the account wagering companies benefit from having televised horse racing. If a company can pay that pricing and out of their own pocket, have enough money to pay rebate to a customer, that's their business." He added that TrackNet didn't consider that as rebating, but as customer service.

He continued to explain that a rebating company (also referred to as a rebate shop) was a company that didn't want to pay general pricing because it wouldn't have enough money left over to pay the rebates that their customers expected. They'd ask the track for better pricing in exchange for bringing volume to the track that the track would otherwise not have.

Regarding computer assisted players, Mr. Daruty stated that there were probably less than ten of those types of players in the world. While they do a high volume, the computer assisted part of rebating was not widespread because it's a business that takes a large investment and a lot of time and was, therefore, not something any one could get into easily.

To explain the impact of rebate shops on the race tracks, Mr. Daruty provided that the eighteen TrackNet Media tracks had four billion dollars wagered on their tracks in 2007. Of that four billion dollars, approximately 400 million dollars was wagered by players betting through rebate shops; 10 percent of the four billion dollars. Of that 400 million dollars, approximately 20 million dollars of host fees were paid to their race tracks. He stated, "In terms of Portland Meadows, it's a six figure number that comes to Portland Meadows every year from the rebate companies. That's a lot of money to a small track like Portland Meadows."

Regarding the argument that rebate shops don't return enough to the industry, Mr. Daruty explained that it was true that a dollar bet through a rebate company returned less money to the industry than a dollar bet at the race track, OTB, or an account wagering company with general pricing agreements. The player that bet a dollar at Portland Meadows yielded about 15 cents for the track and horsemen to share. If that person bet the same dollar through a rebate company, it would yield only about five cents to the track and horsemen because of the different pricing agreement made between the track and the rebate shop.

Mr. Daruty stated, "If we made our content available to everybody on a rebate basis, I think it would be pretty devastating to the industry. There would be no reason for somebody to go to a race track or an OTB and not get a rebate versus going to a rebate shop and getting a rebate."

As a solution, TrackNet Media determined that if there were a player who didn't play today and wouldn't play unless they received a rebate, that player was considered new money. He stated, “What we as race tracks need to do is go out and find new money and bring it to the industry. If paying a rebate is part of what’s necessary to find that new money, then we at TrackNet are willing to do that.”

In order to distinguish new money from old money, Mr. Daruty explained that they adopted a policy, acknowledging that it was less than perfect, where they would agree to lower their pricing and sell their signal to a rebate company if that company had a customer who was so large that the customer would not be likely to ever bet at a track, OTB or typical account wagering company. Mr. Daruty defined “so large” as a customer who would bet a million dollars a year or more on pari-mutuel wagering. He clarified that the pari-mutuel wagering was not limited to just TrackNet Media tracks, but included all tracks across the industry. “We think that is a rebate size player. That that player justifies a rebate and that we will, basically, sell our product for less in order for that person to get a rebate. It’s no different, by the way, than if I go to Las Vegas and I walk into the Belagio and I tell them I’m going to be playing the nickel slots today. I’m going to get a very different reaction than if I asked for a private room to pay ten thousand dollar a hand blackjack. We need to give customer service to horse racing players the same way casinos give customer service to other players.”

- ⇒ In response to Commissioner Dudley’s questions, Mr. Daruty explained, “When somebody asks us for rebate pricing, for lower pricing so they can pay rebates, we say okay, here’s our lower pricing, but you’re not allowed to let players bet on this content through your company if they are not a million dollar or more a year player. If we didn’t do that, there would be no reason for somebody to sit at Portland Meadows. What would happen is the rebate companies might go to Portland Meadows and say hey buddy, why sit here and not get a rebate. Come bet through my rebate shop and you’ll get 10% back on every dollar bet.” Mr. Daruty further explained that they had audit procedures in place for a third party audit firm to verify on a twice yearly basis that the player accounts were a million dollars or larger.

- ⇒ When Commissioners Williamson and Dudley asked about the impact rebate shops would have on the State of Oregon’s income from the tracks, Mr. Daruty explained that the percent of takeout from the handle wouldn’t change, but the total amount of handle in Oregon would increase and thus impact the amount of money Oregon received.

4) Curtis Linnel, Director of Wagering Analysis for Thoroughbred Racing Protective Bureau (TRPB), provided information about the history of TRPB and his opinions on rebating and computer assisted wagering.

Mr. Linnel explained that TRPB was established in 1946 as the security arm of what was now the Thoroughbred Racing Associations of North

America (TRA). The TRA currently had 43 member race track associations, including Portland Meadows. In 2003, the TRPB began the Wagering Integrity Unit and Mr. Linnel was hired as the analyst to head that unit.

According to Mr. Linnel, the TRPB had various programs involved in off-shore wagering, companies that dealt in rebates and computer robotic wagering. They had a database from all 43 race tracks with all pool information from every location on every pool on every track over the course of the year. With that database, they were able to perform wagering investigations for integrity purposes and do so at the request of race tracks, racing commissions, law enforcement organizations, and other groups. He state, “We will take a look at a particular price in a race that the race track might have some customer complaints about or the performance and the pay out where a race track or a retail association may have had some concerns. Or, we may find something that we self initiate investigations on. Part of those investigations have included, extensively, late odds drops, late monies coming into the pool, changes of odds while the races go on, past posting situations, so we have covered the gamut in terms of those investigations.

Mr. Linnel described rebating as “Price discounting on the basis of gross play. By some calculation, it’s gross play. Rather than by on net expenditure or net loss, the rebate is based on gross.” He pointed out that the rebate usually goes to the bettor, but not always the full amount. “When we’re dealing with rebates, we’re getting into the sometimes murky world of other incentives and agents and affiliate play and signing up, and pyramid schemes and everything else that can go with a margin being passed down the line, loans, repayments of loans. It’s a big world in terms of the rebates and it doesn’t always just go to the bettor.”

Regarding computer robotic wagering, Mr. Linnel explained that these companies were primarily located off-shore because of the need to keep costs low. Computer robotic wagering was usually performed by professional computer teams and in order to sustain a profit they had to move to the lowest cost jurisdiction that could satisfy their requirements. He described computer robotic wagering as parasitic because they could only account for a certain level of the pool totals in order for there to be a margin for profit.

5) Roger Nyquist, on behalf of TVG, horse owner, OTB owner, spoke against rebating.

According to Mr. Nyquist, rebates violated the spirit of pari-mutuel wagering because the bettors were no longer on equal footing. He stated that rebating created a different class of customers and while he agreed that the industry needed new money, it needed new customers. He indicated his concern that the high end players would not stay with the horse industry if something better came along.

He submitted, for the record, to Gordon Tallman, Supervisor of Account Wagering Hubs, two news articles involving rebating cases and an analysis written by the NTRA about the issue that more money was being wagered, but less money was going to purses. Mr. Nyquist concluded that it was due to, in part, rebate shops paying less margins to tracks for purses. He added that TVG paid $55 million in source market fees last year and that if they had to change their business model to compete with the other rebate shops, the money would be taken out of those source market fees.

Mr. Nyquist explained that there was a difference between a reward program that an airline paid out and a rebate program. The airline provided a reward to bring in new customers and create customer loyalty by providing gifts and upgrades. A rebate was money given back based on what was spent. He stated, “There’s a difference between programs that attempt to gain new customers and hold the customers you have versus cash back. It’s the cash back that is very sensitive because of the takeout rate and because of the potential to create different classes of customers.”

⇒ In response to Vice Chair Robson’s question as to whether rebating would enhance the already existing different classifications of bettors, Mr. Nyquist responded, “The difference is in the takeout. If most of us pay a 20% takeout rate while the big player only pays 10% because in essence they’re getting 10% back, that’s an advantage not currently being enjoyed by customers of Oregon hubs today. It was with the IRG. You have an application before you to begin that practice, but to my knowledge, they’re not practicing that today.”

*At this time, the commission entered into executive session and upon their return continued the meeting with the next agenda item:*

**5. Action on Proposed Order for MEC Oregon Racing, Inc. dba Portland Meadows**

Steve Walters, MEC Oregon Racing Inc., Counsel, and Dwayne Yuzik were present to answer questions. Information and discussions included the following:

Mr. Walters, for the record, objected to the procedure followed by the commission when they entered into executive session to deliberate on a proposed order with counsel that was involved in prosecuting the case against MEC Oregon Racing, Inc. “We think that denies us a fair hearing. We think it denies our rights to due process and we need to put on the record that objection.”

Mr. Walters asked the commission to adopt the Administrative Law Judge’s proposed order as the final order. He stated, “All MEC Oregon has wanted from the beginning of this process is to get its day in court, to have a neutral decision maker decide the competing characterizations that you've had on the one side from the Attorney General's office, on the other side from us."

⇒ Commissioner Williamson responded, "I don't think that this commission has the authority to make a decision on the legality of the grey machines. No matter what we say. I think if we were to allow this and license you and nobody appeals – nobody can appeal, I guess, that you're still running the risk of felony and having the machines seized and we haven't really proceeded any place. I'd like to take another 30 days to think about this and have one or two members of the commission along with the Attorney General meet with you folks to see if there's some other way that you could attain some sort of legally binding protection."

ACTION: MOTION (Williamson) Tabled until the April 17th commission meeting.
VOTE: 5 Aye, 0 Nay

**6. Action on Final Order by Default for Antonio P. Sisco**

ACTION: MOTION (Dudley) Adopt the Final Order By Default.
VOTE: 5 Aye, 0 Nay

**7. Action on Stipulated Final Order for Roland R. Fergason**

ACTION: MOTION (Dudley) Adopt the Stipulated Final Order.
VOTE: 5 Aye, 0 Nay

**8. Confirmation of Next Commission Meeting – April 17, 2008**

All commissioners indicated that they would be present at the next meeting.

**9. Action on Proposed Permanent Rules on OAR 462, Division 160 (24Hours Prior to Post)**

ACTION: MOTION (Williamson) Adopt the proposed permanent rules as written.
VOTE: 5 Aye, 0 Nay

**10. Public Comment**

None.

⇒ Executive Director Randy Evers announced that the rules were being reviewed and that there would be hearings coming up regarding any proposed changes.

There being no further business, the meeting was adjourned.