

MINUTES

OREGON RACING COMMISSION JUNE 21, 2002

The Oregon Racing Commission met on Friday, June 21, 2002, at 9:30 a.m. for their regular meeting in the Arts and Crafts Building at Josephine County Fairgrounds in Grants Pass, OR. Commissioners in attendance were Steve Walters, Chair; Tom Towslee, Vice Chair and Todd Thorne. Commissioners Lisa Metcalf and Jeff Gilmour were excused. After calling the meeting to order Chair Walters thanked Josephine County Fair and the Southern Oregon Horse Racing Association for hosting the commission for their annual June meeting in Grants Pass. He also thanked Al Westhoff for the nice dinner the preceding evening. Agenda items were discussed in the following order with resulting actions:

1. Approval of May 16, 2002, Minutes

ACTION: MOTION(Thorne) Approve minutes as submitted.

VOTE: 3 Aye, 0 Nay, 2 Excused

2. The Racing Channel, Inc. 2002-2003 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License

Mr. John Dixon, Vice President, Racing Channel, Inc., stated the only change needing to be made was on page 17: change minimum initial deposit for Oregon residents from \$250 to \$50. Chair Walters brought to his attention another change on page 18 in which the availability of funds for wagering was changed by a recent rule amendment to bring the requirements for Oregon accounts into line with requirements for other accounts. Chair Walters also raised a question about the minimum wage as stated in the application as 18 years of age and stated he believed the other hubs had been persuaded to use a minimum age of 21. Steve Barham recommended approval of the application. He also noted that they had filed new letter of credit that goes for the next five years.

ACTION: MOTION(Towslee) Approve application submitted by The Racing Channel, Inc. for the fiscal year 2002-2003 to operate a multi-jurisdictional simulcasting and interactive wagering totalizator hub.

VOTE: 3 Aye, 0 Nay, 2 Excused

3. TVG/ODS Technologies, L.P. 2002-2003 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License

Roger Nyquist stated the application is pretty much a continuation of the operation currently in place. As an update, a year ago they were operating in on four states and they are now up to twelve. Steve Barham recommended approval.

ACTION: MOTION(Thorne) Approve application submitted by TVG/ODS Technologies, L.P. for the fiscal year 2002-2003 to operate a multi-jurisdictional simulcasting and interactive wagering totalizator hub.

VOTE: 3 Aye, 0 Nay, 2 Excused

4. Portland Meadows Request for 2002-2003 Race Meet Window - October 16, 2002 through April 27, 2003

Carl Wilson requested Portland Meadows be approved for the racing window commencing October 16, 2002 and ending April 27, 2003.

ACTION: MOTION(Thorne) Approve 2002-2003 Portland Meadows race meet window subject to timely submission of an application for issuance of a race meet license and approval of that application by the commission.

VOTE: 3 Aye, 0 Nay, 2 Excused

5. Portland Meadows Update

Art McFadden reported on two additional capital improvements that were not mentioned at the May meeting. First, they have totally repaired the quarter horse parking lot problem which was literally a lake during the rainy season. Second, the outside fence has been completely replaced. Carl Wilson reported the barns are being painted and new windbreak plastic has been installed. There were 80 horses on the backside as of last week. Additionally, Art, Carl and George Cleveland have spent some time with the OTB operator in Medford. That operator also owns a bowling alley in Bend that had at one time been an OTB site and will now be used as an interim OTB site since the building where the current site is located has been condemned. Magna is planning on building an OTB site in Bend, so the interim location will fill in until the new location is ready to open. Magna has stated in previous meetings that they wanted to revamp the OTB system in Oregon. This is the first step in that process. Vice Chair Towslee asked whether or not they had looked at any technology other than the decoders which are currently being used. Mr. McFadden stated they have and are still looking into the various options but that it is a slow process. Regarding information on the building of a new track in Oregon, nothing new has happened. Magna has retained a good land use attorney, they are continuing to hold the option on the land south of Wilsonville and Jim McAlpine continues to state that Magna is committed to Oregon.

6. Multnomah Greyhound Park Update

Carl Wilson reported at the end of last week the total Oregon handle was down 3.5% compared to last year at this time being down 12%. The live handle is down 5% and the simulcast handle is down 2.9%. During the last two weeks they ran the Amato Memorial Dash and the Henke Challenge. The Murray Kemp Classic, the \$50,000 sprint championship, will take place on July 6th. Mr. Wilson diverted a little from MGP and reported on a marketing conference he attended at Magna headquarters in Aurora, Ontario, stating that a lot of the discussion was on the future and technology and how far behind the racing industry is in implementing the technology that other businesses are currently using.

7. Crooked River Roundup Association 2002 Race Meet Officials - July 10, 11, 12 and 13

Steve Barham stated the application was approved by the commission at their last meeting, and he recommended approval of the officials submitted as well as their request for takeout rates and use of bute and lasix.

ACTION: MOTION(Towslee) Approve Crooked River Roundup race meet officials, takeout rates and use of bute and lasix as submitted.

VOTE: 3 Aye, 0 Nay, 2 Excused

8. Grants Pass Race Meet Report

Al Westhoff reported that since their race meet was only nine days last year, he did his comparisons with 1999 at which time they ran more days and also simulcast out their live races. At this time of the meet they are about 7.5%

down from 1999. The three scheduled Friday race days were cancelled due to lack of horses. As a result, the HBPA added one race per day and added \$300 average to the purses which means they are racing for \$2500 minimums. He stated everyone has been very cooperative, the weather has been cooperative and he hoped that Grants Pass would continue to be a credit to racing in Oregon. Mr. Westhoff wanted to thank the commission for the hub money and especially for the jockey incentive program, stating he believed they have had fourteen different jockeys so far this meet.

9. Eastern Oregon Livestock Show Race Meet Report

Bob Blair, presiding steward, presented the report since Commissioner Gilmour, who was at the meet for all three days and who would have been the logical person to make the report, was unable to attend the meeting due to the special session going on in Salem. The weather was terrible; the wind blew and it was cold Friday night, on Saturday there was snow in the foothills, and on Sunday it rained all day. The timing of the races has improved and they are getting more cooperation between the races and the rodeo. No horses were injured, however, two jockeys were injured. In response to a question from Chair Walters about the handle, Mr. Blair believed it was up from last year.

10. Final Order for Bill D. Hof

AAG Raul Ramirez recommended the commission adopt this final order which incorporates in substance the proposed order issued by the hearing officer imposing a \$250 fine for bute in a non-bute horse.

ACTION: MOTION(Towslee) Approve the final order for Bill D. Hof.

VOTE: 3 Aye, 0 Nay, 2 Excused

11. Final Order for Greg L. Hoover

AAG Raul Ramirez recommended the commission adopt this final order which incorporates in substance the proposed order issued by the hearing officer imposing a \$200 fine for bute overage.

ACTION: MOTION(Towslee) Approve final order for Greg L. Hoover.

VOTE: 3 Aye, 0 Nay, 2 Excused

12. Referral by Board of Judges for Revocation of Licenses of Ronald M. Floyd

AAG Raul Ramirez stated Mr. Floyd has agreed to withdraw an appeal that was pending before the hearing officer panel with respect to one disciplinary proceeding and a second incident concerning his greyhound farm. Mr. Floyd agreed to waive a formal hearing before the board of judges as well as a contested hearing before the hearing officer panel and agreed to have this matter submitted directly to the commission. The board of judges have also referred the matter directly to the commission with the recommendation that Mr. Floyd's farm license be permanently revoked. In discussion regarding the proposed revocation, Vice Chair Towslee made the following statement: "I'm not hung up on how long this revocation is for, if he wants to apply in two years or five years. The point is that every time Mr. Floyd would come back before this commission would be an opportunity for the commission to reassert its authority that it really cares about the animals that are in this industry and the fact that we take an action as serious as this. In this case, I think it deserves that. A reappearance in front of this commission by Mr. Floyd gives us the chance to reaffirm that message. It's incumbent on this commission to make sure that these animals are treated humanely and that

there's integrity and the public has faith in both the quality of the racing and the quality of the treatment that these animals are receiving."

ACTION: MOTION(Towslee) Permanently revoke Mr. Floyd's greyhound farm owner license and that he not be allowed to reapply for five years.

VOTE: 3 Aye, 0 Nay, 2 Excused

13. Action on Request for Reinstatement of License by Ron Floyd - tabled 4/18/02

ACTION: MOTION(Towslee) Deny request by Mr. Floyd for reinstatement of his license as greyhound owner/trainer.

VOTE: 3 Aye, 0 Nay, 2 Excused

14. Amendment of OAR 462-220-0040 - State of Oregon Share of the Pari-Mutuel Handle

Following is a transcript of this agenda item:

Towslee: On June 17th we held a hearing on this rule. What the rule does is it amends the amount of money that the Racing Commission can collect from hubs in the case those hubs, stick with me here, in the case of those hubs that are licensed in another state that has a hub law. Right now there's only one state that does that and that's California. In simple terms, Oregon has a .25% tax on hub wagers. California has no tax. The issue that we're trying to address here is one that was raised years ago in a very prophetic statement by Steve Barham is that Oregon will not have trouble getting hubs, Oregon would have problems keeping them, and we are essentially now in competition with the state of California for hubs. Apparently the .25% tax that we have has biblical significance in the tiny California market which is teetering apparently on the brink of collapse if they don't get this .25%. So, we have set up a process here whereby any hub licensed in another state with a hub law can come to us with a plan to pay less than the .25% that we charge. I'll be happy to answer any questions.

Walters: I'd like to say a few words about this. First of all, I hate this rule. And I'm going to say a few words about why I'm going to vote for it despite the fact that I hate it. This issue apparently came up with respect to TVG in presentations before the California Horse Racing Board, and some competitors of TVG, who shall go nameless, raised an issue before the California Horse Racing Board that gee whiz, isn't it terrible that the California industry is having to bear the cost of two things: one, the .5% NTRA fee that TVG pays, and secondly, the .25% on handle that TVG and all the hubs licensed in Oregon pay to the, basically two-thirds of that goes to racing in Oregon and one-third goes to the General Fund. The California Horse Racing Board jumped into this issue with all four feet, and we have requested and read the transcripts of a couple of meetings of the California Horse Racing Board where this issue was discussed. The only thing that I can say is that the arrogance and demagoguery are breathtaking. This is an example of the worst sort of regulation that you can imagine where a regulatory body sees its job as regulating and determining the competitive balance in its state and when one competitor feels that its competitor is getting some sort of an advantage, whether it's because of a superior product or because of better negotiating skills or whatever, they run to the California Horse Racing Board and say, make them stop that, and the California Horse Racing Board seems to get in the middle of it. So, the reality is that the California Horse Racing Board is putting tremendous pressure on TVG, and I believe Youbet.com as well, to relocate their hubs to the state of California. We've had discussions about the benefits of the hub money and that the reason we're here today is because of the hub money and the reason there was racing in Union and there's going to be racing in Harney County, Prineville and Tillamook is because of this hub money, but no one at least in the regulatory body nor some of the competitors in the California market seem to be very interested in inquiring about those matters. The other reason that I hate this rule is that it is precisely the opposite of a policy we should have. The policy we should have is that if one of our hubs is being taxed in another state we take that into account so they aren't being double taxed and being put in a competitive disadvantage. It is ridiculous that we should have to consider waiving our tax because another state chooses not at this present time to tax. If anyone would be willing to bet me that in a couple of years if California succeeded in getting all of the hubs to relocate there that California won't have a tax on hubs and that it won't be a heck of a lot higher than .25%, I'd like to take that wager. But, at any rate the policy that we are being pushed to adopt it's the wrong policy. The policy should be the other way around, but we have no choice. The Oregon horse racing industry depends very heavily on this hub money; we wouldn't have summer

horse racing without it. It just galls me that a regulator in California would see its job as basically setting policy for the state of Oregon and that the competitors of TVG in California would try to use that to manipulate hubs to relocate to California and suffer from the same competitive disadvantages they do. The one comfort I take in all of this is having read these transcripts and having viewed from afar the regulatory climate in California is that I can take comfort in the fact that no hub operator in his or her right mind would choose to be regulated principally in California rather than in Oregon where despite the many problems I know this commission has I think that we have been sensitive to industry concerns and have been sensitive particularly to the development and tried to nurture the development of hubs, and I think we have a track record of hubs recognizing that in coming to the state of Oregon. I would urge any of our hubs before they would consider that gee, maybe we should go to California, come by my office and I'll let you read these transcripts and some of the correspondence from some of the competitors trying to sic the California Horse Racing Board on their competitors. That is a long winded way of saying that I'm outraged that California has taken this position. I hate this rule, but I think it's something we have to do. We have discussed the fact that Commission Towslee had proposed putting a one year sunset on this rule and I think that's a good idea so we can see how it's going and we can see, part of the hope is that the redevelopment of the California market there will be more wagering on California races in the states where we will be taxing and that the overall handle will go up. And certainly as the hubs expand and as TVG expands that will be the case. But at any rate I hate this rule even though I'm going to vote for it.

Towslee: I agree with the chairman. I hate the rule. I hate the fact that we're sort of put in a position here of playing defense, but the greater good here is that the hubs will continue to generate money for county fair race meets and hopefully for other needs in the future. Ultimately this will reduce the amount of revenue that we get in the hub, because what we'll eventually be asked to do is waive the tax on wagers in California on California or races everywhere depending on how it's submitted. That will probably affect two hubs, so that will decrease the revenue that we get into the hub account. The other side of that equation is that the pie will continue to grow, and while that hole will still exist hopefully it will be less significant as the industry expands and begins taking wagers. And, of course, we don't see a proliferation of other states creating hub laws with no tax. So, while I dislike the situation that we're put in I do believe that the growth of the industry will continue to provide sufficient amount of money to fund race meets in Oregon. I also believe that this is probably not the last step we're going to take in this issue. It will continue to have to be competitive in finding ways to make the hubs more profitable but at the same time generate the money that we need to run fair meets is always going to be an issue before us and we're going to have to tweak and adjust and do other things with the way we collect revenue from the hubs in response to market needs. But ultimately in our recognition that keeping hubs in Oregon was going to be a difficult situation we created a friendly regulatory environment, one in which gave these hubs tremendous amount of flexibility to do the kind of business models that they wanted to do. The chairman is correct. If you want to see a repressive, over enthusiastic, petty demagogic regulatory environment, just read the transcripts of the California commission. Believe me, you'd be happy to pay .25% in this state rather than go down and deal with that situation. So, hopefully over the long run everybody will benefit from this racing in Oregon and the hubs who choose to locate here and choose to do business here. I pity those who have chosen to do business in another state.

Walters: Other comments.

Thorne: I had a great speech but I think most of the points have been well covered here, so...

Towslee: ... but I think there's one more point ... (laughter) I think there is one more point here. What I really, really don't want to see, and I blew it and we may be seeing it now, is that disagreements between competing hubs in other states are spilling over and having an impact on the revenue in Oregon. I understand that everybody wants to get a competitive edge here, but I would hope that you can confine your disagreements to those states where they're relevant and that there not be a negative impact or adverse impact on the ability for race meets like Grants Pass and Tillamook and Harney County and where-have-you to have successful meets and race for decent purses and have decent facilities. So, with that I'm done.

Walters: Was that your last point?

Thorne: That was exactly my last point. I will concur with the chairman and Commissioner Towslee, and the points they bring up I think are accurate and I adhere to those and am not going to repeat them. There is an issue of a one year sunset on this provision; I think that's something obviously that I'm in support of. From my standpoint as I see the hub system developed interstate there's going to have to be some standardization I would think going forward, and I believe that this sunset forces us to revisit this in a year and I hope at that time the industry can provide us with some other structure that kind of answers this question interstate because if we get in a situation where we're continuously haggling interstate amongst hub and fee structures and taxes, I think that's counterproductive. So, I'm certainly in favor of a one year sunset and I concur with the chairman that I hate this rule and I hate that we have to, in a sense, roll over for some arrogant attitudes down south, but we'll do it for the betterment of the industry to date but certainly subject that to revisitation in a year.

Towslee: Well said.

Walters: First of all I think there's a word missing in subsection "2" of the rule. I think it should say: Notwithstanding subsection "1" of this rule and the second "2" ought to be a "3".

Thorne: Where are we at?

Walters: On the text of the rule. And then we would add a subsection "4"...

Barham: I would suggest just a sentence at the end of "2" that says: This provision will sunset on June 30, 2003.

Walters: Okay. And with those amendments to the proposed rule, is there a motion?

ACTION: MOTION(Thorne) Approve the proposed rule as amended.

VOTE: 3 Aye, 0 Nay, 2 Excused

15. Confirmation of Next Commission Meeting - July 18, 2002

The meeting date was confirmed. Commissioner Thorne stated he may not be able to be present due to timing of the wheat harvest.

16. OTBA Modified Petition for Hub Revenue

Ursula Gibbons stated the purpose for putting this item on the agenda was to hopefully urge the commission to set some timelines and a process whereby other segments of the industry can apply for hub funding. Commissioner Towslee stated the first obligation of the hub fund is the purses at the summer fair meets. Based on the belief there will eventually be excess money in the fund, he proposed that he and Commissioner Gilmour meet with the executive director to come up with a process to receive requests for hub money beyond purses and establish a criteria for how that money should be awarded. Once the process has been established people will be invited to submit their proposals for the use of that money. It was acknowledge that this request by the OTBA and one proposed by the HBPA at a previous meeting will be considered as having already been submitted. The commission needs to know what other requests may be out there. Once that has been determined the process will be implemented and the money awarded.

ADDED ITEMS BEFORE THE COMMISSION:

17. HUB Meeting

Vice Chair Towslee suggested having the commission sponsor a meeting of all the hub operators to discuss any mutual issues, i.e., possibly looking at

alternatives to a .25% tax that would benefit both the hubs and the summer fair meets.

18. TVG Request

Roger Nyquist requested the commission's authorization per OAR 462-220-0040 for TVG to pay zero percent of the total receipts for wagers made by California residents on live races conducted at any TVG partner race track.

Walters: Questions or comments.

Towslee: This request, we are waiving the tax on all wagers by all Californians on all races everywhere in the country, correct?

Nyquist: That would be correct, Commissioner Towslee.

Towslee: What is the financial impact of that?

Nyquist: There are a number of financial impacts. The short-term financial impact, and this request would begin with the Del Mar meet starting July 22nd I believe it is, you wouldn't get the California revenue which continues to be a growing market, or put it this way, as the one year sunsets, there would be a short-term negative effect on hub revenue. Notwithstanding that the industry continues to grow and TVG continues to grow its business, in the long-term I believe that this a smart and good (unintelligible) by the commission.

Towslee: But now we know why we hate this rule.

Walters: I think the fiscal and economic impact would be what is set out in the fiscal and economic impact of the rule that is in the notice that was sent out. And this estimates, and it's hard for me to tell whether this is an aggressive assumption or conservative, but it says that based on the assumption stated that the revenue loss to the commission would be \$143,000. Of this amount \$47,812 would have gone to the state General Fund and \$95,625 would have gone to the Development Fund to support county fair racing. The other side of the impact that is not indicated here would be the impact if TVG and other California licensed hub, Youbet.com, succumb to the pressure to relocate to California whereupon our share of the wagers made through TVG and Youbet.com would be zero.

Towslee: There's a couple of concerns here. One is we're obviously foregoing the revenue from a state that represents the sixth largest economy in the world, and this is not a particularly good time in the state of Oregon to be diminishing the amount of money going into the General Fund. As insignificant as that is, it's probably as insignificant as the .25% in the California scheme of things, but that's okay. We have really no choice but to work with TVG on this issue and hopefully by approving this we can find some other way of gaining revenue from hubs other than the tax. I think that door is still open, I think we'd be remiss if we didn't at least explore it.

Walters: I agree with you.

Towslee: So, you need this decision by the 22nd, is that what you're telling us?

Nyquist: There are a number of issues ongoing in California. We need this decision.

Towslee: Okay, because this rule is only about 15 minutes old.

Nyquist: I understand that. I'm not asking that it go into immediate effect. I'm asking that it go into effect at the beginning of the Del Mar meet.

Walters: Our executive assistant reminds us that until the rule is filed, I take it, it's not effective.

Barham: It's effective date is upon filing, so I think that answers it. The thing that I would suggest, though, is because you have taken action on the rule you could take action on this as long as the effective date of this action would be after the effective date of the rule.

Towslee: Is that a matter of days? There's not time limit here as far as...

Barham: We would file the rule probably Monday or Tuesday of next week.

Towslee: Can we frame a motion here in such a way that this request is approved as of the filing of the rule?

Barham: The effective date of the implementation of their request is July 22nd. So, I would say it's clear that they're not talking about the elimination of paying the .25% tax up until that point. At that point you have a rule that the commission will allow it.

Walters: But you need it effective as of Del Mar and that's July 22nd.

ACTION: MOTION(Towslee) Approve the request submitted by TVG to become effective on the later of the effective date of the rule or July 22, 2002.

VOTE: 3 Aye, 0 Nay, 2 Excused

Nyquist: I want to thank you, and I hate it too. And I think that Commissioner Towslee is right that through all this a couple of things have come up. One is how much money do we need to fund what it is we need to fund, county fairs coming first. The industry needs to get together and we need to determine that. And then, I think, I would welcome a process where we get the hub operators together with a regulator to determine what's the best tax structure to get us to that point and maintain Oregon's competitive advantage that we have currently by (unintelligible) these hubs. So, I thank you all very much.

18. Youbet.com Request

Joe Hasson came forward to make the same request as TVG, however, given the fact that Chair Walters had to recuse himself due to a conflict of interest in that his law firm also represents Youbet.com, there was no longer a quorum present to take action on the request. It was decided by the commission and agreed to by Mr. Hasson to place this request on the July 18, 2002, meeting agenda when a quorum would be present.

19. Complaint by Carol Brumbaugh, Trainer

Ms. Brumbaugh had a complaint against a steward regarding an incident that took place where a named rider had been taken off her horse without her knowledge. Ms. Brumbaugh was directed to file her complaint with the executive director to look into the matter and to give her the answers she needs.

There being no further business, the meeting was adjourned.