

MINUTES

OREGON RACING COMMISSION AUGUST 29, 2003

The Oregon Racing Commission met on August 29, 2003, at 1:30 p.m. in Room 140 of the Portland State Office Building located at 800 NE Oregon Street, Portland, OR. Commissioners in attendance were Steve Walters, Chair, Lisa Metcalf, Jeff Gilmour and Todd Thorne. The governor has not yet appointed an individual for the remaining commissioner position. Agenda items were discussed in the following order with resulting actions:

1. Approval of July 17, 2003 Minutes

ACTION: MOTION(Thorne) Approve minutes as submitted.

VOTE: 4 Aye, 0 Nay

2. Portland Meadows 2003-04 Race Meet Application

Scott Daruty, Magna Entertainment, and Jeff Grady, MEC Oregon Racing, Inc. were present. Mr. Grady stated there were a few changes. Sunday racing will be replaced by racing on Mondays. First post on Saturdays and Mondays will be 2:30 p.m. HBPA and OQHRA representatives stated they did not have a problem with the change in days. Chair Walters stated it did not appear that there was in request in the application under the forms of wagers to have Instant Racing. Mr. Grady stated that was an oversight and that they would submit a formal request for the wager. Quarter Horse races will again be placed at the end of the card on Fridays plus they will be adding one or two races on Saturdays. The Quarter Horse stakes schedule is very similar to the one last year. Chair Walters had some questions about the projections on state share. Stacey Whearty confirmed the projected amount does not include the exports due to fact the state only received a share of the Oregon handle. There was discussion regarding the stakes schedule and the concern as to whether or not there would be enough funds in the purse account to cover all the purses. Commissioner Gilmour stated he was not willing to guarantee any hub funds to supplement purses at Portland Meadows. It was reported the tote would be hubbing out of MGP until the super hub is completed at Portland Meadows. In noting that Lydia's Restaurant was named as an OTB site in the application, Jodi Hanson stated it has not yet been officially approved for operation but it is in the process. She also stated she has had some concerns about EPA issues and as a result had met with Jim Gagliano, Jeff Grady, and other Portland Meadows staff to go over her concerns.

ACTION: MOTION(Metcalf) Approve the 2003-04 race meet application subject to approval by the executive director of the following conditions: (1) Resolve the date Portland Meadows will begin simulcasting, and (2) Complete the purse projections.

Scott Daruty reported on the following:

(1) The current status of other items relating to Portland Meadows, i.e., working to get the NPDES permit allowing them to operate indefinitely at their current location, discussions with the EPA regarding the permit and completing the projects regarding rerouting some of the water from the roof areas on the barns before it becomes contaminated. He said the work can

be done over the course of two summers, however, in response to a question regarding the stabling of horses for the next two summers, Mr. Daruty replied that determination had not been made yet.
(2) ExpressBet has agreed to pay source market fees for the State of Oregon, which will generate additional money for purses.

3. Oregon HBPA Hub Funds Request

Dave Benson explained the request for hub funds was submitted due to the fact their contract does not allow them to operate at a deficit, and the OHBPA is not in a position to run on projections. The funds are needed to insure there will be enough funds in the purse account to pay purses for the entire meet. The current deficit is \$13,000 and they are projecting an additional \$250,000 to the current amount if the handle remains the same as last year. All commissioners acknowledged the seriousness of the problem, however, they were not ready to allocate any hub funds at this time for purses at Portland Meadows. It was suggested that the OHBPA go ahead with the purse schedule that has been in place for the past few years and then reassess the situation in January as to whether or not the handle will cover the purse schedule for the rest of the meet. Mr. Benson requested that the matter be tabled pending further discussions with Magna.

4. OTBA Hub Funds Request

Ursula Gibbons explained they are in a similar situation as the OHBPA and that they are requesting funds to boost the purses of their three major Oregon-bred two-year old stakes races as a result of the lowering of the purse account allocations towards these races. Chair Walters referred to the previous agenda item and the jeopardy to purses across the board. He was hopeful the OTBA would be involved in the aforementioned discussions with the result that halfway through the meet the commission can revisit the issue. Ms. Gibbons asked that their request be tabled pending further discussions on the issue.

5. Multnomah Greyhound Park Race Meet Report

Jeff Grady introduced new members of his staff: Stacey Whearty, controller; Mark Folkman, who has taken over the duties formerly done by Lonnie Craig; Mitch Bevil, director of security, who is handling EPA issues; and Patrick Kerrison, director of wagering services, who is in charge of OTBs. Mr. Grady reported a new OTB site, Rose Manor, was opened last week. They will be evaluating all OTBs and will be upgrading where needed. The track had a very successful Derby, they are in the process of doing new forms of wager, and the export handle is starting to go up. Mr. Grady said they are looking forward to the rest of the meet and the beginning of Portland Meadows.

6. Tillamook County Fair Race Meet Report

Bob Blair, presiding state steward, reported the meet was very successful. No riders were hurt and no horses were injured. There were a lot of people in attendance, the weather was great, and there were plenty of horses. As a result of the number of available horses, a race was added to the Saturday card. Mr. Blair stated as a result of the jockey incentive program there were 12 riders and 125 starters at the meet this year. That can be compared to 6 riders and 87 starters when there was no incentive. There was also a tremendous increase in handle. The Towslee Memorial ran smoothly without any injuries.

7. Discussion of Nevada Law Permitting Rebates

Following is a transcript of this agenda item:

- Walters: Thank you. I am going to jump down to Item #13 - A discussion of Nevada Law that allows rebates. We have a number of people here from our hubs. I asked that this be put on the agenda. The subject of rebates – has become a fairly hot topic nationally in racing circles. Several articles – what caught was the state of Nevada allows account wagering in that state – and allows for rebating. That is where the hub operator or the account wagering operator or race track provides incentives, benefits or distributes most of the take-out back to the bettors. It has been an operation that has operated off shore for some time, but now with the possibility of it happening in Nevada – is something we – our reliance on HUBs. I really want to start a conversation a process of thinking 1) is there anything we would need to do. If HUBs wanted to engage in these efforts at the very least there are limits to operating plans. I want to make sure we are not falling behind the industry in our regulations.
- Hayes: (Ben Hayes, US Off-Track) I come here on behalf of the Oregon HUB association, a conglomerate of HUBs operating here in the state of Oregon. 1) The word rebate has some very negative connotations in the industry. What we are really talking about is the marketing and promotional efforts of HUBs or what not and the efforts to attract customers and reward loyal customers for their activities. With regard to the Oregon Racing Commission, I'm not sure anything has to be done. First, I have looked at the rules and statutes and I'm not sure that there is anything in the rules and statutes that address the issue. 2) The industry has already taken care of the problem. I have talked to a number of people about the issue - the industry has come a long ways in regulating itself through the relationship between the host track and the HUBs or the guest. Here are three contracts – Texas, New York and California – all of which contain identical language – it has been addressed by the host tracks. The host tracks really govern what happens. I think the focus ought to be left with the host track and allowing them to do what they think they need to do to increase their handle as much as possible and not rely on the regulations of the HUBs themselves.
- Walters: Thanks, Ben.
- Hayes: The red tabbed areas are the language that is inserted in each of those contracts. The language is identical in each of those contracts. The ORC's regulatory environment is one that is very pro business – allowing each Hub to design its own operational plan. It doesn't say that you have to do it in a certain way. Giving each Hub the freedom to go out there in the business world and do what they do best. In different environments in the world – there may be issues with certain tracks where regulation is necessary to adopt a different type of strategy. We need to remember that we are operating in a global marketplace not just the US marketplace. We shouldn't regulate the business activities of the Hubs to a point that it kills their ability to compete with off-shore Hubs. I think the ORC has already addressed the problem and solved it. Rebates, what is the fear? Of making sure that the host tracks get back something from the bettors that are in their area. The ORC has a mitigation program that is built in – and taken a unique stance and that solves that issue.
- Walters: Two concerns 1) the poaching concern – the concern about off-shore operations – the nasty rebater – they are paying a host fee and a small portion of that is going into purses. They are pulling off large bettors who would otherwise be betting into pools where there would be a larger take-out. They are doing it because they refund a big percentage of the take-out that they get because their expenses aren't much. Their host fee plus some small portion of the take out and then they distribute that to their owners or account owners and depending on how much they bet they get a dividend. That is the sort of operation "Blood Horse" is talking about. The other concern: big players are the ones that you should be most concerned about leaving for these off-shore Hubs, and you have a problem if you put in a program where big players get rewarded more than the general public. Does that create a problem? When I first came on the Racing Commission part of my thought was that is a major concern. The more I learn about the threats to racing and the importance of distribution and getting into the market place to compete, I worry less about that. Worry more about – are we losing our best customers? Those are my concerns.

- Hayes: I already addressed the first issue. The regulatory environment that we work in here in Oregon already addresses the poaching problem with the mitigation aspects of it. With regard to the second issue, the host tracks are in the best position to limit that aspect of the activities that are called rebaters. It would be very difficult, as a regulator to define rebate. How would I go about trying to enforce it? How could I regulate it? You can take the rule and try to design a solution to the problem. You could create a regulatory quicksand for yourself. This could create more and more issues. Commerce verses regulatory... Will the marketplace regulate this activity? I think it has. It has reacted over the last 10 years. The contracts have limited that.
- Walters: Do the offshore poachers have the ability ...coming through a Hub to get the signal to avoid having a contract with the tracks?
- Hayes: If you look at the language that is in each of those, it not only says the guest or Hub ...their secondary sources. It also limits them as well in the way they conduct their business. We must also look at customers now days – customer loyalty programs throughout the US and in most every industry. The host tracks themselves do it. If they have a good customer who comes into the track and places a lot of bets, they will do certain things for that customer. Buy him a few drinks, buy him a dinner, I thinks it happens out there. The question is: does the ORC need to do something about it? I'm not so sure they do. I think it could be detrimental to the business environment in place in Oregon.
- Walters: Any other questions? Any more testimony? This is the start of a conversation. I would like to get some advice from our attorney general, does he see anything in our statutes or rules that would prohibit us from ... we need the information for review ...
- Hayes: You are asking to put it in the operating plan. Would you envision that to be proprietary in nature?
- Walters: It could be. A lot of the information you submit is proprietary. Then I would like to consider making clear that if it is legal – that we would consider changes to operating plans. That would provide for some type of benefits or ... If our Hubs think it is in their best interest. Without making decisions I want to get the ball rolling to consider that. Raul, if you could get on it and get us some advice. I trust Ben's advice but I trust yours more.

8. Proposed Amended Order for Jody R. Davidson

Raul Ramirez stated this case most recently came before the commission in the form of a proposed order from an administrative law judge at which time the commission considered the order and opted to reject the majority of it. The one before them today is an amended proposed order to which Mr. Davidson has filed exceptions.

ACTION: MOTION(Thorne) Reject exceptions and adopt the amended proposed order and direct counsel to draft a proposed final order to be acted upon at the next commission meeting.

VOTE: 4 Aye, 0 Nay

9. Proposed Order for David W. Strong

Raul Ramirez reported this case involved financial irresponsibility. No exceptions were filed. Mr. Ramirez suggested that the commission adopt the proposed order as a final order. He also recommended that some of the findings of fact be supplemented to reflect boarding costs for some pups and adult females. He will then prepare a final order for signature by the executive director.

ACTION:MOTION(Thorne) Adopt the proposed order as a final order which will include the amendment recommended by counsel.

VOTE: 4 Aye, 0 Nay

10. Action on Request for Stay of Commission Order on Stephen C. Fisher

This is a request for stay of proposed order which was adopted by the commission. Chair Walters reported that Mr. Fisher intends, if he has not already done so, to file an appeal with the Court of Appeals. The question is whether or not the commission wishes to grant a stay of the commission order pending the appeal.

ACTION: MOTION(Metcalf) Deny the request for stay.
VOTE: 4 Aye, 0 Nay

11. Confirmation of Next Commission Meeting – September 18, 2003

No changes in the scheduled meeting date.

12. Legislative Update

Jodi Hanson reported HB 3646 which is the measure that eliminates the overlap of horse and greyhound racing dates has been completed and is waiting for the governor's signature. Dave Nelson, OQHRA, as well as Chair Walters and Commissioner Gilmour applauded the efforts of everyone for their efforts in getting legislation passed during the 2003 session which will benefit the racing industry in Oregon. Roger Nyquist, as a lottery retailer and OTB site operator, raised concerns regarding the way the current lottery contract is structured. If the industry doesn't get an exception to the contract, the legislation recently passed and signed by the governor could become almost meaningless.

13. Action on Proposed Changes to Administrative Rules – 462-140-0390

Jodi Hanson stated this was a housekeeping amendment to make this particular rule relating to greyhound racing be consistent with a similar rule pertaining to horse racing. A hearing on the proposed changes was held on August 21, 2003, at which there was no public testimony. Ms. Hanson recommended adoption of this amended rule.

ACTION: MOTION(Gilmour) Adopt the proposed amended rule.
VOTE: 4 Aye, 0 Nay

14. Initiate Rulemaking for Additional Instant Racing Wagers

Chair Walters stated there are additional generations of Instant Racing wagers and Magna would like the ability to explore those other wagers.

ACTION: MOTION(Gilmour) Initiate the rulemaking process for additional Instant Racing wagers.
VOTE: 4 Aye, 0 Nay

There being no further business, the meeting was adjourned.