

MINUTES

OREGON RACING COMMISSION APRIL 17, 2003

The Oregon Racing Commission met on Thursday, April 17, 2003, in Room 140 of the Portland State Office Building located at 800 NE Oregon Street, Portland, OR. The meeting began at 9:00 a.m. with the conducting of a hearing on proposed rule changes. Following the hearing the commission adjourned for lunch and reconvened at 1:30 p.m. for the balance of the meeting. Commissioners in attendance were Steve Walters, Chair; Tom Towslee, Vice Chair; Lisa Metcalf and Todd Thorne. Commissioner Jeff Gilmour was excused. Agenda items were discussed in the following order with resulting actions:

1. Approval of March 20, 2003, Minutes

ACTION: MOTION (Towslee) Approve minutes as submitted

VOTE: 4 Aye, 0 Nay, 1 Excused

2. Josephine County Fair 2003 Race Meet Application – May 17, 18, 24, 25, 26, 31; June 1

Prior to taking action on the JCF and SOHRA race meet applications it was noted by Chair Walters that a fax had been received from SOHRA this morning objecting to the dates requested by JCF and asking that SOHRA be given the dates of July 4, 5 and 6. Chair Walters stated this matter needed to be taken into consideration when taking action on the JCF race meet applications. Jodi Hanson reported there were actually three applications for racing at Grants Pass due to statutory requirements. Chair Walters stated that research on the history of race date allocations prior to 2001 showed there appeared to be the tradition that SOHRA had the dates around the July 4th holiday. It was also pointed out, however, that Mr. Lowe, who is listed as a SOHRA board member objecting to the dates, signed an application requesting the dates that were consistent with JCF. Vice Chair Towslee raised the question regarding simulcasting of the race meet, and it was then noted by Chair Walters that there was nothing in the applications requesting approval to simulcast their races.

ACTION: MOTION(Towslee) Approve race meet application for dates May 17, 18, 24, 25, 26, 31, and June 1 and delegate to the executive director authority to approve an amendment to the application to include simulcasting.

VOTE: 4 Aye, 0 Nay, 1 Excused

3. Southern Oregon Horseracing Association 2003 Race Meet Application – June 7, 8, 14, 15, 21, 22, 28 and 29

ACTION: MOTION(Towslee) Approve race meet application for dates June 7, 8, 14, 15, 21, 22, 28 and 29 and delegate to the executive director authority to approve an amendment to the application to include simulcasting.

VOTE: 4 Aye, 0 Nay, 1 Excused

4. Josephine County Fair 2003 Race Meet Application – July 4, 5, and 6

ACTION: MOTION(Towslee) Approve race meet application for dates July 4, 5 and 6 and delegate to the executive director authority to approve an amendment to the application to include simulcasting.

VOTE: 4 Aye, 0 Nay, 1 Excused

5. Oregon Greyhound Association Proposed Budget for Fiscal Year 2003-2004

Dick Gage was present to answer questions. Jodi Hanson recommended approval.

ACTION: MOTION(Thorne) Approve budget for fiscal year 2003-04 as submitted.
VOTE: 4 Aye, 0 Nay, 1 Excused

6. Oregon Greyhound Breeders Association 2003-2004 Proposed Budget

Vince Bruno was present to answer questions. Jodi Hanson recommended approval.

ACTION: MOTION(Thorne) Approve budget for fiscal year 2003-04 as submitted.
VOTE: 4 Aye, 0 Nay, 1 Excused

7. Request for Commission to Lift Suspension of License for Vernon C. Bigham

Chair Walters stated it appeared that the request was moot as the order suspending Mr. Bigham was issued on February 20, 2002, and there was no appeal submitted. Given the fact there was no date set in the order as to the ending date of the suspension and the stewards only have the ability to suspend a license for 365 days, Mr. Bigham's suspension would have expired by operation of law on February 19, 2003. Mr. Bigham's license also expires on June 30, 2003. Chair Walters stated that subject to confirmation by counsel this license is reinstated by operation of law. He went on to say that even if this is the case and if there were to have been a decision made by the commission on Mr. Bigham's request, he would not have voted to lift the suspension for Mr. Bigham. Raul Ramirez, AAG, confirmed that the analysis was correct in that the suspension terminated by its own terms and that the license became effective as of February 19, 2003. That wouldn't preclude the stewards or the commission from initiating proceedings to either suspend or revoke Mr. Bigham's license based on the conduct. Jodi Hanson will write a letter to Mr. Bigham stating his suspension ended as of February 19, 2003.

8. Portland Meadows Update

Art McFadden stated Jim Gagliano, Magna Group Vice President, was present for the meeting today as was Scott Daruty, counsel for Magna, and Louis Sella from Oaklawn Park. After 74 days of racing the total Oregon handle is down 1%, the exports are up 53% over last year, and the live handle continues to decline due primarily to short fields. The reason for the field size is primarily purses. They need to raise their purses in order to compete for the horses. The summer stabling looks good, and the training hours will be extended to 9:00 a.m. during the weekdays in the summer. In response to a question from Vice Chair Towslee, Mr. McFadden stated Magna intends to begin the 2003-04 Portland Meadows meet two weeks earlier than this year and in previous years in order to eliminate the two week overlap at the end of the meet with Emerald Downs. This would require an adjustment with the greyhound race meet.

9. Action on Proposed Changes to Administrative Rules - OAR 462-110-0010 and OAR 462-200-0630

Following is transcript of this agenda item:

Walters: These are the proposed amendment to OAR 462-110-0010 and the proposed adoption of a new rule OAR 462-200-0630. This has to do with a new form of wager with the title of Electronic 1-2-3 with Pick N wager. There was a rules hearing this morning attended by most of the folks here on these proposed rules and proposed amendment to the rule. We were looking, as we discussed in that

hearing, at four issues. Two had to do with whether or not this form of wager was legal under Oregon law. Based on a memorandum that we had received from our counsel the two issues we were looking at were (1) was this a form of pari-mutuel wagering which is all that the commission authorize, and (2) was it a game of chance which would decide whether or not it was legal under Oregon's constitutional provisions related to lotteries. We also were looking at the issue of whether or not this would be good public policy for the State of Oregon to approve a wager of this sort. The last issue was whether there should be some changes to the language of the rules if we are inclined to adopt them. I will give what I think is a summary of the testimony we heard this morning with respect to these rules on these issues, and I'd ask that Commissioner Thorne, Commissioner Towslee and Executive Director Hanson add anything that they think is appropriate or necessary.

Based on the testimony it seemed pretty clear to me that this is a form of pari-mutuel wagering. It's a classic form of people betting into pools and the racetrack taking its commission and then the remainder of the pool being distributed to the winners. One can analogize to various forms of wagers such as a Pick 6 or various exotic wagers. The way it's formatted, they're exactas, trifectas, although they've changed the language to be more user friendly to folks who aren't as familiar with racing, but the one difference that we discussed this morning was that only person at a time can win the pool because the pool builds up, the person hits it, and then the pool goes up again until someone hits and continues in that fashion. I'm satisfied that that does not change the fact that this is pari-mutuel wagering. The witness we heard, John Walzak, talked about analogies to other forms of wagering and carryovers where the people who help build the pool don't have a chance to win it because they're not there or for whatever reason that they don't participate. I'm satisfied that based on the testimony that we heard that it is pari-mutuel wagering. I am also satisfied that it is not a game of chance. One is given past performance information. Plainly in handicapping any race whether it's horse or greyhound you have an advantage if you are using past performance information to try to predict the outcome of the race. It isn't the same as pulling a slot machine where numbers are randomly generated. There is skill involved. So, I don't think it's a game of chance, and I think the fact that it is not is also validated by the statistics that show that these wagers are won far more often than one would expect if people were just playing randomly and if it were a random game of chance. I think the testimony demonstrated pretty clearly that this was not a game of chance as well and at least I am satisfied, but we ought to have more discussion on the issue that this is legal under Oregon law. On the issue of the public policy of the State of Oregon, we had some discussions about problem gaming, whether there were indications that this would cause problems with problem gaming. The testimony I think was it's hard to get a handle on it because the game is so new, but that the racetracks do in general monitor people to look to see for signs of problem gaming and have programs, hotlines, that people can call and that type of thing in case there appears to be a problem. The other side of the public policy coin is the potential benefit to the racing industry in Oregon, and through that the State of Oregon as a whole. Certainly based on the experience at Oaklawn and Southland Greyhound Park it would seem pretty clearly that it has the potential for raising purses by a significant amount in Oregon, which is appropriate given the discussion we just had. Also sending off additional tax money to the State of Oregon and benefiting people in racing in general. So, my conclusion would be it certainly is consistent with the public policy of the State of Oregon. I do have a couple of thoughts about the language of a couple of these rules. At this point I would defer to Commissioners Thorne and Towslee and Executive Director Hanson if they have other thoughts that they would want to add.

Thorne: Just a couple thoughts because it was brought up earlier this morning. Number one, I just think it's a good idea. This industry has some competitive threats out there and this, in my mind, is a pretty creative way to try to deal with those competitive threats. From that standpoint I think it's great for the racing industry as a whole. Just a short note on the issue of problem gambling, I think I at least want it on the record that if we were to approve the rules that there would be some sort of stipulation about how the licensee would monitor that. I don't think I need anything concrete, just so there is something in the rules or something that alludes to the fact that we would be interested in monitoring problem gambling. I don't think that's a very tough thing to accomplish. I think they do it at Oaklawn maybe without it stipulated, but I wouldn't mind seeing that. At any rate, I still think it's a good idea and would certainly support it.

Walters: Commissioner Towslee.

Towslee: First, I want to thank Magna. This is one of the rare instances where the management at Portland Meadows has worked with other members of the industry...

Walters: This is a new management...

Towslee: I understand, ...to get consensus within the industry, so I want to thank you for sharing this game with the OTBA, HBPA, quarter horse and the people from the dog track. It's refreshing to see that. All too often in the past we've seen proposals from Portland Meadows, not the current management, sort of sprung on us and sprung on the industry. So, I appreciate you doing that. Secondly, I have no problem with this rule. I think this is pari-mutuel betting, it does fit the criteria. I'm not even sure would could disapprove it.

Walters: Yeah, we could.

Towslee: We could. But under the definition of gaming and games of chance and pari-mutuel, it clearly meets that criteria. It will probably be viewed by some as an expansion of gambling. I have no problem with that. I think Oregonians become pretty immune to growing gambling in this state, so I doubt that this will raise much of a ripple outside of the racing industry and I certainly hope it does something to increase purses and increase attendance at the track. But I'll say what I said before that you can grow this pie as much as you want, but if there's an Indian casino placed closer to Portland they're going to eat that pie. I hope that all the energy that you've put into convincing us of the wisdom of putting these machines in the track you'll take that same energy and devote it to keeping those Indian casinos as far from Portland as possible. Thank you.

Walters: Executive Director Hanson, any comments about the hearing this morning?

Hanson: Yes, just a couple. I also wanted to commend Magna. I see this as a real proactive way to look for solutions to increasing purses and also I love to see people working together. Just coming fresh from the legislature I had another example of all of us working together, so it's really great. I concur with Chair Walters. I am convinced that it's pari-mutuel and it is in the best interest of the public for this to happen. We've tried it out up in our office and it seems like something that would really attract a lot of the people who like to play video poker.

Walters: Commissioner Towslee and I can't win the game even when we see the race the second time, but that's our problem.

Hanson: I think it's great, and I really hope that Magna will continue to work improve the integrity of racing in Oregon and hang around.

Towslee: I've got one more thing. In you updates if you could give us some kind of idea of the status of the machines once Multnomah Greyhound Park is open. I'd like to know how many there are and what kind of revenue they're generating, etc.

Walters: Again, you 're ahead of us. We have their request to do it after we approve the rules. Commissioner Metcalf, any questions about the hearing this morning or testimony we heard?

Metcalf: No.

Walters: I do have a couple of quick thoughts about the rules themselves. One on the proposed amendment to OAR 462-110-0010(26)(b), there's a typo.

Morgan: Yes, we already corrected that.

Walters: Okay, you already have that, "in" should be "is"? Okay. The other question that I have is on 462-200-0630(2)(a). It says: Wager Amount: acceptable wagering units shall be no lower than \$0.25 and no higher than \$20. My only question on that is whether or not we ought to cast that in stone. I do that there are some of these machines that have nickel wagers. I asked and was told that none of the machines that satisfy this definition have a nickel wager, but it still seems to me that if there were an ability to offer a nickel wager or dime wager or somebody decided they wanted to bet \$50 on a

wager such as this it would be nice if that could be approved without changing the rule. So, I would propose adding "absent prior approval by the commission" to the beginning of that line, and then make it read: Absent prior approval by the commission, acceptable wagering units shall be no lower than \$0.25 and no higher than \$20. This is just to put in some flexibility in case the games satisfy these definitions. My understanding is that there are other games but they don't satisfy the definitions in these rules so we'd have to do a rulemaking anyway to accommodate some of the other games that, for example, Oaklawn has. It seems to me that flexibility makes sense. Do any other commissioners have any comments on the text of the rules themselves?

If we have a motion to approve these, I would like the commission as part of its approval to make factual findings. I think we would ask our counsel to write up in the form of an order or whatever the appropriate format is that based on the testimony that we have heard and viewing the operation of the machines, that the Racing Commission finds as a matter of fact that this is pari-mutuel wagering and that we find as a matter of fact that is not a game of chance. I would like those findings to be a part of our record in the event anyone asked us what we did and why we approved it and secondly, if there were a subsequent challenge to the rule. If that's acceptable to members of the commission, that could be included in the motion to approve. Other questions or comments? Is there a motion?

Thorne: I'll move to approve contingent on adding to the language that we've talked about here.

Walters: And that would include making the factual findings that we've discussed?

Thorne: That's correct.

Walters: And that would include approving both the amendment to the existing rule and the new rule?

Thorne: Absolutely.

Walters: Further discussion. All those in favor signify by saying aye.

All: Aye.

Walters: It is approved. We're all quite hopeful and excited. Again, thanks to everyone who participated in our hearing, particularly the folks who came all this way, but also to members of our industry who took the time to learn about this and participate in serious discussions. Again, this is an example of people working together in this industry which is the only way we're going to survive.

10. MEC Oregon Request to Approve Electronic 1-2-3 with Pick N Wager for The Multnomah Greyhound Park 2003 Race Meet If Wager Is Adopted by The Commission

Chair Walters explained that Art McFadden had submitted a letter asking for approval of the wager. He stated at some point the commission needs to work out a format for what a request for approval to offer these types of wagers would include. At the very least it needs to include the material in newly adopted rule OAR 462-200-0630 subsection (10) titled Commission Approval. Chair Walters suggested that the commission act on this particular request, and ask Magna to submit substantively the material set out in subsection (10) of the rule. He also suggested that the commission delegate to the executive director the ability to approve the additional request. Commissioner Thorne again stated he would like to see in the request to be submitted by Magna a statement about monitoring for problem gambling.

ACTION: MOTION(Thorne) Approve the request subject to the application and delegated authority to the executive director.

VOTE: 4 Aye, 0 Nay, 1 Excused

11. Confirmation of Next Commission Meeting – May 15, 2003

No changes in meeting date.

12. Legislative Update

Jodi Hanson stated there hasn't been any movement on any of the bills being tracked at the last commission meeting with the exception of SB 5540 which is the commission's budget limitation bill. Ms. Hanson reported April 1, 2, and 3 we appeared before the joint General Government subcommittee of the Ways and Means Committee. There were some valid concerns that the legislature would want to go after the hub funds to put them into the general fund. Everybody gathered together to protect the hub money and to keep those monies in the development fund to be used exclusively for the benefit of the racing industry in Oregon. Ms. Hanson thanked everyone for their efforts to help protect the hub funds for racing related expenses and projects.

There being no further business, the meeting was adjourned.