

MINUTES

OREGON RACING COMMISSION September 22, 2004

The Oregon Racing Commission met on September 22, 2004, at 1:30 p.m. at Portland Meadows located at 1001 N Schmeer Rd., Portland, OR. Commissioners in attendance were Steve Walters, Chair, Jeff Gilmour, Lisa Metcalf and Julianne Davis, Todd Thorne. Agenda items were discussed in the following order with resulting actions:

1. Approval of August 19, 2004 Minutes

ACTION: MOTION (Metcalf) Approve minutes as submitted.

VOTE: 5 Aye, 0 Nay

2. Presentation by Paul Romain on Behalf of the Oregon Greyhound Association

Paul Romain: Requested \$110,000 in hub money (through April 2005) for their greyhound adoption program which is one of the most successful programs in the country. They believe they will need about \$120,000 for next year as well; however they have additional opportunities for raising money from other sources including the Legislature. He feels the funds would be especially important if greyhound racing is eliminated in the next 2 years.

Steve Walters, Chair: Noted that this adoption program is a credit to Oregon and the industry. Clarified that the year they refer to is based on a racing season, not a calendar year. He requested clarification from Dick Gage on the adoption kennel costs and requested the clarification in writing. Steve asked for an explanation as to why there is such a shortfall this year and if this is an emergency request. Dick said they will not stop placing greyhounds. Last year they received \$30,000 in hub funds. Dick confirmed with Steve that the projected shortfall for this season is \$110,000 and they expect to be out of money around January or the first part of February.

Todd Thorne, Commissioner: Noted that this adoption program is essential and the Commission should assist the program as much as possible, but reminded participants that the hub funds are running low. The request is welcomed and will be reviewed within the accepted process at the beginning of next year. The Commission's ability to help the OGA will depend on the balance of the hub funds at the end of the year.

Jeff Gilmour, Commissioner: Noted that he does not want to see this important program go unfunded. The adoption program is also a valuable tool in working with animal rights groups. He strongly urged the program heads to have a timely request in for the December deadline for the hub allocations. Jeff reminded the audience that hub funds are not unlimited and are not guaranteed in any way. He encouraged adoption program heads to negotiate the program into any contract that is signed.

Steve Walters: He cannot overstate how important the program is, but the request for hub funds simply cannot be addressed at this time. Asked them to resubmit the hub request at the end of the year with a better explanation of the figures and how they match up.

Jodi Hanson, Executive Director: Clarified that hub revenues are coming in as expected but the purse account request for last year was over and above the funds in the account at that time so we're building back up for that. If things continue as they have been there should be some money to work with. The allocation has to be split into 8 quarters and at present we have already used 8 quarters of money in 6 quarters so Jodi will be going to the E-board in November to be sure there is enough money for the last 2 quarters.

3. Request by Charles R. Williamson, Attorney for Kevin M. Ciula, to Overturn Decision of Executive Director to Deny Request for Stay

Steve Walters: The meeting materials contain a letter from Mr. Williamson making the request and material relating to the order that was issued and the notice of appeal filed in this case. He would like to hear from Mr. Williamson and Mr. Ciula then at some point later in the meeting go into Executive Session to deliberate on the issue in private.

Charlie Williamson, Attorney: Mr. Ciula has been suspended for six months for three things. He did not add information under "alias" on the application he signed (which was already filled out by a Commission employee) even though he has used the name Steve Stephens which his employer requested he use for the rewards program at the track. He has held the same position at the track for nine years and in some cases performs some of the duties that an Assistant Mutual Manager would, but no one has ever suggested that he was not allowed to bet nor was it kept secret that he was wagering. On 4 or 5 occasions he asked a friend who was operating a window to make bets for him. Mr. Ciula did not make the bets himself while he was on duty. Charlie feels that when all the facts are known, Mr. Ciula will not be punished and that he should go through hearings without due process without being penalized. He feels that by not issuing a stay the fair hearing process is rendered moot. He will have served his 6 months suspension before the matter is finally adjudicated. The statute says that the Executive Director or any Commissioner can issue a stay so he thinks the full Commission should review the Directors decision.

Steve Walters: He felt that the judges issued a thoughtful order rejecting one charge and weighing conflicts of evidence. He understands Charlie's good cause argument to be that he thinks the charges are wrong and there's a good likelihood that it will be reversed or reduced by an ALJ. Steve's question is how they should distinguish this situation from any other situation. Under Charlie's argument stays would be virtually automatic when the presumption would seem to be the other way around.

Williamson: He said they were surprised with the judge's order because it seemed they weren't all at the same hearing. There were a whole series of things talking about Mr. Ciula opening an account for Internet betting with his wife but there was no accusation of improper use. Steve says it appears that the issue was discussed regarding attempts to hide betting activity. Charlie argued that there are novel interpretations of the rule, the alias charge is extremely thin and that Mr. Ciula did not bet while on duty.

Walters: If a conditional stay were granted how could it be enforced?

Williamson: Mr. Ciula has not intended to break the rules and would know that if he violated these rules again the penalty would be much harsher.

Statement from Mr. Ciula: He has been licensed as a mutual employee at Multnomah Greyhound Park for 17 years. Until now he has had a completely clean record and has held the same job for the last 9 years. He never understood the rule to be interpreted to be that anyone doing the duties of an assistant manager was restricted from betting. He has never held the position of assistant manager. When he was presented with the application renewal he told Jan Meier that he had a new title but essentially the same duties. She left him categorized as a Mutual Employee. His bosses are categorized as Mutuel Managers and Assistant Mutuel Managers. He did not notice the word alias because the form had already been filled out. Even if he had seen the alias section he would not have thought his use of the name Steve Stephens for the Magna rewards program would qualify as such. The ORC staff was well aware that he was betting on races. The confidential informant obviously is aware of his betting at MGP. Mr. Ciula did ask a mutuel ticket seller to buy tickets for him but did not place bets while on duty. The rules were written before simulcasting. He says he's known Steve Roden for 10 years and Roden has known for years that he's played at MGP and said it's OK as long as he's off duty. In discussing the investigation with him, Steve said that if Mr. Ciula was off duty then it was OK. Mr. Ciula respectfully requested that the stay be granted until he has an opportunity to have this matter fully considered by a hearings officer and the Commission.

Steve Walters asked Assistant General Counsel Raul Ramirez if he had any response to the argument made by Mr. Williamson.

Raul Ramirez, Assistant General Counsel: The standard to be applied here for the request for the stay is set by statute and is consistently stated in the rule that the stay can only be granted if good cause shown by the person requesting the stay. Based on the materials and presentations all that has been established is that there has been a disagreement in the interpretation of the various rules. Raul said he doesn't believe that establishes good cause because that would mean that anyone who disagreed with any ruling of the judges or stewards would defacto be entitled to a stay of whatever sanctions were imposed. It is not set forth in the statute or rules what to use as a standard after the Executive Director has already decided the issue. He believes that any decision made by the Director or any of the Commissioners should be given some deference but it's not clear how much deference that should be. He suggests they fall back to the questions of good cause and doesn't believe that has been established here. Jeff Gilmour clarified that a commission member can issue a stay.

Williamson: Argued again about the novel interpretation of the rule.

The Commission moved forward with the agenda with the intent to go into Executive Session later in the meeting to discuss the request.

4. Oregon HBPA Proposed Budget for 2004-05

Dick Cartney: Asking for a very similar budget as the last couple of years. Chair Walters clarified that the budget is from meet to meet rather than on a calendar year. He also asked why the benevolence scholarship and vision program were under spent last year. Dick said fewer people have requested money from the programs.

Lisa Metcalf: How many people do they send to the national meeting listed at \$16,000/yr. There are two meetings a year and they try to send three people to each meeting. Dues include payments to National Association and NTRA. They provide a dental insurance program but not medical though they do help people with medical expenses if they are in need. They have combined their Christmas party and the required general membership meeting in an effort to save money.

Jodi Hanson recommended the approval of this budget

ACTION: MOTION (Metcalf) Approve budget as submitted.

VOTE: 5 Aye, 0 Nay

5. Portland Meadows 2004-05 Race Meet Application

Patrick Kerrison, MEC: Distributed a corrected page for the report changing the race dates. The final stakes schedules for both thoroughbred and quarter horse racing will become immediately available once approved by the appropriate organizations. The export wagering agreement currently includes 14 requests but 25 – 30 are still pending. Over 35 imports have been received and are they expecting 10 – 15 more contracts. Off-track wagering agreements have been sent out and they expect most of them to be returned by early next week at the latest. Once received, they will be submitted to the ORC for approval. Surety bond was delivered at this meeting. Jodi recommends the Commission accept that bond for \$265,000. Steve asked where they are in negotiations with the HBPA.

Scott Daruty: The thinks they are close to a purse agreement but negotiations are ongoing. They expect to have an agreement in place well before the start of the race meet and will submit it to the ORC as soon as it is prepared. Steve reminded everyone that uncertainty is not good for the industry and the statute will not allow the race meet to start without an agreement.

Jodi Hanson: Asked for clarification that General Manager Jeff Grady will be leaving the organization. This is true, and Chris Dragone is expected to take over his position but it has not been officially declared yet. Patrick will assume the day-to-day duties in the absence of Mr. Grady. Jodi asked him to expand the names of the race meet officials with decision making authority named in the application and Patrick agreed.

Walters: Asked if the daily double is a new offering. Patrick said it is but is not expected to be a regular offering. It will be race specific and noted no less than two week in advance. Steve also asked him to strike the out of state pools language so they can be approved on a case by case basis. Steve agreed to allow (and encouraged) them to drop the surcharges at Umatilla and Wood Village. Steve asked that exports be added to the application. Several other issues were briefly discussed.

Jodi asked for a summary of the last few years export information. Jeff Gilmour asked if the out of state wagering list is correct. Patrick said they would like approval to send to that list though they don't plan to do so right away.

Steve proposed approval of the application pending several delegations, most importantly a purse agreement.

ACTION: MOTION (Gilmour) Approve application as submitted with delegations to the Executive Director of purse agreement and stakes agreement, export and import agreements, agreements with off-track betting facilities, proposed make-up dates, tip sheet approval and other issues discussed in this meeting.

VOTE: 5 Aye, 0 Nay

6. Requests from Magna Entertainment Corp.

a. Commission Action on Refusal of Youbet to Pay Source Market Fees

Steve Walters noted that they have heard from Jeff True of Youbet.com and he has missed his plane so will not be attending the meeting.

Scott Daruty: If there is anything that needs to be done to give Mr. True a fair hearing that's fine with them. The issue they have with Youbet is that they have been taking wagers from Oregon residents for years without paying a source market fee. They have had a number of excuses as to why they don't pay the fee and several were detailed. This year the decision by Magna to withhold Magna content from other providers has proved unpopular and has complicated the matter. That was a decision they feel they were forced to make by TVG which has exclusive contracts with various racetracks in the U.S. He believes every operator should have every signal. Scott said he understands that Youbet reached an agreement with the Oregon horsemen where they are paying some fee, but he is not privy to the details. He doesn't feel that relieves them of their obligation to pay a source market fees to the racetrack. There was some discussion of how other states impose these rules, specifically Washington State.

Jeff Gilmour asked what we require to license a hub. Steve explained that essentially hubs are expected to provide source market compensation, but they may implement this in different ways. The Commission has never had to confront this issue before. This is a major issue and is currently on the table of the Hub Sub-Committee. Steve suggested that this can be resolved as an operating plan issue, but that nothing should be decided upon until the Commission hears from Jeff True. Commissioner Lisa Metcalf expressed her agreement with Steve that the issue can be resolved this year through the operating agreement.

Scott agrees that this is a very important policy issue and urges them to consider the broader implications of how to deal with hubs that aren't licensed in Oregon.

Steve called to have this issue held over until the next Commission meeting with the expectation that Mr. True will be able to attend.

b. Add International Secondary Recipients

Scott Daruty: Magna would like to add some international locations as secondary recipients on the Portland Meadows import agreements. They have worked out a tax structure that would allow Europeans to wager at European betting locations into the U.S. pools without adverse tax withholding consequences. The host association receives a host fee as compensation.

Steve Walters: as a note to the public, the Commission has received a submission by Magna describing in detail how this would work but it is designated proprietary and confidential. Wagers are placed at off-track betting location in Europe and are run through Magna Austrian racetrack which is a licensed pari-mutuel facility, and on through their Maryland facility into U.S. pools. They are considering moving the Maryland location to Portland Meadows and because they are looking to do this year-round, also Multnomah Greyhound Park. This is a request on behalf of MEC Oregon Racing.

ACTION: MOTION (Thorne) Approve request, noting that the Commission has jurisdiction over this activity by its licensee and is also subject to appropriate reporting on the activity and completing the process of getting information on regulatory authority to the Commission.

VOTE: 5 Aye, 0 Nay

7. Dates Request for 2005 Grants Pass Downs Race Meet

Jodi Hanson: Recommends this item be tabled for now and that all the applications be reviewed in January. There has been discussion about the overlap between Grants Pass and Union and the fact that there were stakes races in Grants Pass that affected some of the ability to get riders at Union. This also speaks to the agenda item on Discussion Regarding Commission Taking Action on All 2005 Race Meet Applications at the January Commission Meeting, so that should be discussed now as well. Discussion moved to that item.

8. Discussion Regarding Commission Taking Action on All 2005 Race Meet Applications at the January Commission Meeting

Jeff Gilmour: When these applications are reviewed separately there are sometimes conflicting dates that are overlooked. He suggested they look at the participants in blocks, particularly the non-commercial meets. Steve Walters clarified that Jeff wants the non-commercial meets to put in a request for dates in January and other information may follow. Jeff also noted that the county fairs usually have their annual meeting in January and he's heard that perhaps two additional counties might be interested in adding racing to their schedules which would involve hub funds. Jeff would also like to see more consistency with non-commercial horse racing rules involving racing secretaries, perhaps with a Commission sanctioned secretary.

There was some discussion about the need for a January deadline to include both commercial and non-commercial meets in order to set the overall racing schedule for the calendar year. Patrick Kerrison of Portland Meadows agreed that it is a good idea to request dates in January.

The **Dates Request for 2005 Grants Pass Downs Race Meet** has been tabled to January. As a note to Grants Pass Downs and SOHRA; in the past there have been disputes over who gets what date and Steve would like that resolved between them before race date requests are submitted in January.

ACTION: MOTION (Thorne) Motion to receive all race date requests from commercial and non-commercial race meets by the January Commission meeting

VOTE: 5 Aye, 0 Nay

9. Multnomah Greyhound Park Race Meet Report

Patrick Kerrison: The numbers have been down. They have had 85 race dates this meet as opposed to 109 at this time last year. Live handle is down 32.5% on a cumulative basis based on 24 fewer races. Export is down 48.3% and simulcast is down nearly 5%. The average live handle to date last year was approximately \$72,000 and now is about \$63,000. Exports last year to date were \$44,500 last year and are now at barely \$30,000 this year which he attributes to changes in operating procedures with Phoenix. Kennel cough and hurricanes in Florida.

10. Portland Meadows Status Report

Art McFadden, MEC: They should have a full barn area about a month after the meet starts. Chris Dragone will officially be the General Manager as of October 1. There are 344 horses on the grounds now. This is about 150 less than last year which is due to the EPA project which is 80% complete at this time. It has caused a number of problems on the back stretch which is why they are delaying some of the horses. They anticipate completion before opening day. The first condition book will be out next week. The quality of applications is down as is quantity (by 13%) due to purses.

Patrick Kerrison: There is a possibility at the end of October of local owners and riders getting a quarter horse Triple Crown that carries a \$100,000 bonus. They expect a flood of positive press from this and other events. Good Day Oregon is interested in doing a couple of stories on Portland Meadows this year. Jeff Grady is leaving and Chris Dragone will be taking his place. Kathy Passey has been replaced by Nichelle Milner. There is a new track superintendent, Lyle Magnison, so they are convinced that the track surface concerns of last year should be taken care of. The new Assistant Racing Secretary is Steve Peery. The track surface consultant should be arriving within the next couple of weeks.

11. Confirmation of Next Commission Meeting – October 21, 2004

Meeting date is approved by all commissioners.

12. Action on Proposed Amendments to Administrative Rules – OAR 462-200-0640 – *continued from 8/19/04*

This is a rule proposed by AmericaTab concerning a new type of bet. There was a public hearing where an issue was raised about if this was feasible from a programming viewpoint. They previously closed the public hearing and deferred action on the rule until today to see if there were further developments on that subject that our staff could report on.

Jodi Hanson: All of the previous concerns have been addressed. It is feasible so Jodi recommends approving the rule.

ACTION: MOTION (Thorne) Motion to approve proposed rule

VOTE: 5 Aye, 0 Nay

13. Request by AmericaTab to Amend Operating Plan to Include Ability to Create Non-Merged Pari-Mutuel Wagering Pools for Inclusion in Wagering Menu

Todd Bowker, AmericaTab: They are seeking to create non-merged pools on foreign racing with permission of horsemen's organizations and the host tracks. They are seeking to create those pools in the United States and have them regulated by the Oregon Commission. They plan to get the consent required by the Interstate Horseracing Act regardless of if it applies to this situation. This would be for U.S. bettors to wager at tracks in other countries. They have entered into an agreement with the only racetrack in Peru, and are also working with other racetracks in foreign jurisdictions to acquire the rights to their content as well. AmericaTab will submit all contracts to the Commission for approval. Steve Walters asked that they adopt an amendment that would incorporate the specifics that were just discussed.

Todd Thorne clarified that they'd be setting up non-merged pool so U.S. residents can bet on international host tracks that authorize betting in their jurisdictions in merged pools. Several additional issues regarding international account wagering were also discussed including take-outs, tax issues and currency conversion.

ACTION: MOTION (Metcalf) Motion to delegate the approval of this operating plan amendment to Jodi

VOTE: 5 Aye, 0 Nay

14. Oregon OTBA Proposed Budget for 2004-05

Ursula Gibbons requested approval of the OTBA fiscal budget for 2004-05. Steve Walters clarified that the reserves consists of money that has been sitting there for several years to be used for operations in case of catastrophe. Jodi Hanson recommended approval of the budget.

ACTION: MOTION (Gilmour) Motion to approve the budget as submitted.

VOTE: 5 Aye, 0 Nay

The Commission conducted deliberations in private Executive Session.

The Commission returned from Executive Sessions to act on the request by Charles R. Williamson, Attorney for Kevin M. Ciula, to Overturn Decision of Executive Director to Deny Request for Stay.

Steve Walters: The facts as found by the judges reflect a serious violation of the rules. It is clear to all members of the Commission why the Executive Director denied the stay; there are issues about public perception with respect to the integrity of racing in Oregon, as well as public safety if the facts are as found by the judges. The Commission is not second guessing the decision of the Executive Director or the findings of the judges. The persuasive factors to the members of the Commission were harm to Mr. Ciula who has an otherwise unblemished record as a licensee of the Oregon Racing Commission, and the fact that it is an application of rules to facts that have never come before the Commission before so it is a new case and a new situation.

ACTION: MOTION (Thorne) Motion to grant the stay subject to conditions that the fine be paid and that Mr. Ciula not engage in any gambling whatsoever in races subject to the jurisdiction of the Oregon Racing Commission pending the outcome of the appeal to the ALJ and the Commission.

VOTE: 5 Aye, 0 Nay

15. Harney County Fair Race Meet Report

Bob Blair: The frustration was high with the management but not the horsemen. The new barn wasn't finished, only one of two video towers were up so they had to use a scissor lift for the other, they ordered a test barn but a garage was delivered, and all the colors were stolen form the jockey room. The P.A. people put their big speakers in front of the tote board which cause a problem because they had to move the tote board. This delayed the first race and cut wagering short for that race. In the 8th race there were several problems delaying that race for about an hour. When the race finally went off jockey Martinez was injured and was removed from the track by ambulance for minor surgery. After that race things got back on track. Steve Walters asked if these conditions constituted a need for additional considerations when reviewing the Harney County Race meet application next year. Bob said it did not. Fifty percent of the jockeys were female so next year they will need separate jocks rooms for each gender. The handle was down due to the delays in racing.

Jeff Gilmour: He attended the meet and confirmed that he witnessed these issues first hand. This is another example of why he feels there needs to be more uniformity within the summer fair race meets.

16. Report on Commission Roundtable on Racing in Oregon on September 15, 2004

Jodi Hanson: The ORC hosted the first Roundtable on Racing on September 15, 2004. It was well attended, with about 30 people signing in. The stake holders represented their concerns about handle and raising the purses. The result of the meeting is that each group will brainstorm for ideas to improve purses and consider the future of racing in Oregon including the possibility of partnering with and Oregon tribe. The meeting will reconvene on October 13th at 10:00 am.

17. Discussion on Jockeys Being Able to Wear Advertising on Silks While Racing in Oregon

Jim Smith: They had a rider from Montana to ride at Burns and he had advertising on his pants for a Bar and Grill from another state. He indicated to Jim that he planned to ride at Portland Meadows this winter, so Jim wanted to let the Commission know that this issue may need to be addressed soon. He has had other requests throughout the summer meets on the same issue.

Steve Walters asked Jim to get together with the other stewards and put together a list of specific guidelines for use of advertising on pants and run them by the Commission. The stewards would be the ones in charge of enforcing the advertising rules. He also asked Jim to research what other jurisdiction have done in these matters.

Bob Blair said he had worked with this situation in the state of Illinois where a topless bar was advertised. The stewards rejected that advertising and he suggested Jim might start his research by reviewing the rules in Illinois.

Lisa Metcalf suggested that Portland Meadows charge for the advertising opportunity and have to fill out an application just as they would for an ad in the program. That may defer some of the people who don't want to spend as much money advertising. Steve was still concerned about first amendment issues but agreed that this is a good idea.

Jim Smith also gave the results of the jockey incentive program. Three women and three men qualified for the program. Twylia Beckner was the highest with a \$10,800 bonus. There may be some changes for next years program that may include daily mount money and provisions for injured riders. Jodi Hanson thanked Jim and his staff for all of their work on the program.

There being no further business, the meeting was adjourned.