

## MINUTES

### OREGON RACING COMMISSION October 21, 2004

The Oregon Racing Commission met on October 21, 2004, 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, Jeff Gilmour, Lisa Metcalf and Julianne Davis, Todd Thorne. Agenda items were discussed in the following order with resulting actions:

#### **1. Approval of September 22, 2004 Minutes**

ACTION: MOTION (Davis) Approve minutes as submitted.

VOTE: 5 Aye, 0 Nay

#### **2. OQHRA 2004-05 Proposed Budget**

Leah Nelson, OQHRA: Requesting \$15,000 be taken from the Quarter Horse purse account during the Portland Meadows race meet to help run the association. No major changes from previous years. Jodi Hanson recommends approval of the budget.

ACTION: MOTION (Metcalf) Approve budget as submitted.

VOTE: 5 Aye, 0 Nay

#### **3. Request by Attorney for Gerald Wooten to Reschedule Appeal Hearing before Office of Administrative Hearings**

Anna Raman: There was a miscommunication over the time of the hearing and Ms. Raman asked that her client not be penalized for the error. She requested that the hearing be reset. Raul Ramirez noted that the representations made by Ms. Raman are correct. They apparently had a miscommunication he does not recall but he will defer to her recollection on that subject. Chair Walters asked if a default order was entered; it was not.

ACTION: MOTION (Thorne) Move that the hearing be rescheduled

VOTE: 5 Aye, 0 Nay

#### **4. Multnomah Greyhound Park Race Meet Report**

Chris Dragon, MEC Racing: Results for the past meet were disappointing. Live handle was down 31% and simulcast statewide was down 6%. Stacy (MEC) says all days were down regardless of a per performance comparison. They have spent \$40,000 just this month on TV, print and radio ads to promote the opening of Portland Meadows, Breeder's Cup and the Futurity. They have finalized a one-year agreement with the HBPA and the EPA requirements have been completed at a cost to Magna of \$770,000. They have about 750 horses at Portland Meadows at the current time, down a bit from normal because of the EPA work.

MEC decided to close the Umatilla OTB parlor because it was simply not competitive with the Washington OTB right across the river. Even with the waiving of the surcharge it still was not competitive. They intend to open a new OTB in that area in the future.

#### **5. Portland Meadows Race Meet Report**

Chris Dragon, MEC Racing: Oregon handle was down opening day by 8.5%. Commissioner Gilmour asked for clarification on if a trainer/owner could film races and Chris said it was fine with him and he would work with the owner on that issue.

#### **6. Confirmation of Next Commission Meeting - November 18, 2004**

All Commissioners except Commissioner Metcalf are available. It was also announced that Lisa Metcalf has been nominated for reappointed to the Commission for four more years.

### **7. Report on Roundtable on Racing in Oregon on October 13, 2004**

Jodi Hanson: The stakeholders present were concerned that there wasn't a presence from Magna available to speak at the meeting. It was decided that Jodi would contact everyone and find out what had happened since the talks at the first meeting and arrange for a follow-up meeting.

### **8. Report on Hub Sub-Committee Meeting on August 21, 2004**

Commissioner Davis: This Sub-Committee is reviewing how the taxes are assessed on the hubs. They reviewed one of the rules that has a sunset provision that keeps getting extended and determined that they need to decide the issue. They noted that the hubs are good for the racing industry and the State of Oregon. The Commission wants to keep hub here, realizing at the same time that there are obligations to the entire constituency, the industry at large and the State of Oregon. The statute allows taxes to go up to 1% and right now everyone pays .25% on the handle in taxes. They are trying to find a formula to continue to realize funds while still being fair to the hubs. There is a lot of interest in having a sliding scale based on handle up to .25% with a to-be-determined cap. There was also some discussion of having no cap but having the percentage be ever decreasing. The sub-committee has asked the hubs to provide some additional numbers to work with. The next meeting will be on November 18 to continue the discussion.

Commissioner Gilmour: Asked if the sub-committee has reviewed the privileges granted to certain hubs and relationships with hubs in different states. Walters said the focus has been on the tax issue but these other issues have been on past agendas and the sub-committee intends to address them further.

### **9. Request from Magna Entertainment Corporation for Commission Action on Refusal of Youbet to Pay Source Market Fees - continued from 9/22/04 & Request from Youbet.com, Inc. to Amend "Track Relationships" Section of Operation Plan**

Jeff True, Youbet.com: Yobet.com has made an application to change their operating plan to reflect their current policies. Commissioner Davis is concerned that the amendment seems to contradict their operating plan regarding source market compensation for shifts in local wagering activity that is not tied to receiving the signal. Jeff said their agreement with the horsemen in Oregon was their attempt to mitigate any possible shifts in handle. Walters pointed out that this doesn't mitigate the impact on the track. Jeff agreed but said the broader issue is about demanding payment while withholding content.

Commissioner Thorne noted that there is no rule regarding source market fees and suggested that a rule should be discussed by the Commission because the issue is not going to go away. Walters said that is an item on the hub sub committee agenda but they haven't addressed it yet. Thorne is concerned that these are business issues that he feels should be negotiated and should not be decided by the Commission. Walters noted that there is a rule that says the operating plan must address measures to mitigate the impact on live racing.

Walters sees two issues here; (1) whether or not the policy and associated rule needs to be modified and (2) the current disagreement which he sees as an operating plan issue. He agrees with Davis that the operating plan submitted by Youbet.com says they will enter in to negotiations to compensate with tracks to mitigate the impact on host fees and wagering which was the basis for approving the original operating plan. It seems that this amendment has been submitted because a dispute has arisen.

Jeff says they assumed there would be good faith negotiations about content for a price. They are happy to pay source market fees "where they make sense in the context of the arrangement." They've paid over \$15 million in source fees over the last few years and don't have a problem doing it. They feel they are being held hostage for that fee yet they are being told that they won't get the content. Walters said he'd feel differently if they had approved a different operating plan when the license was granted. Jeff says in his view the two issues can't be separated like that. Walters noted that they are separate in Washington State so it is possible. Regardless of any agreement with the horsemen, which he applauded, Walters' interpretation of the Youbet operating plan is that they agreed to negotiation in good faith with the track on appropriate levels of source market compensation and that didn't include what is in the amendment. He is not inclined to change it because of a dispute.

Jeff reminded Thorne that the commission has a responsibility to the state to enforce regulation and manage the racing business in this state and he finds it hard to believe that the commission would agree that it is OK to withhold racing content. If there was a misunderstanding about the operating plan

then the amendment clears that up. There is simply a difference of opinion and the commission needs to decide if they want Youbet to do business in Oregon. Walters noted that the commission tries to stay out of business negotiations and he feels this is simply an operating plan issue.

Commissioner Gilmour asked about the possibility of binding arbitration which is not available in this situation. If the amendment is denied then the next step Youbet would take would be to include the amendment in their next operating plan and try again to negotiate the disputed issues in the meantime. Jeff said negotiations were attempted at the local and national level and they have failed. Walters clarified that they are dealing only with a complaint in Oregon.

Dave Benson, HBPA: Source market revenues are of outmost necessity if race tracks are to continue operating. Having received no revenue over the last two years from Youbet, the HBPA entered into a separate agreement to receive their share of those source market fees. They are now concerned that they made a mistake with that agreement because if the track is not also compensated there will be no racing. Benson is concerned that this will set a precedent for other hub operators to refuse to pay source marketing for the same reason. He is also concerned because they receive no accounting from the hub operators and would like that remedied in a monthly report.

Walter summarized that the two issues to be decided are (1) if the proposed amendment to the operating plan should be approved and (2) if it is not approved what the obligation is with respect to Magna's complaint. These issues need to be considered without making broad policy decisions which should be considered in the hub sub-committee.

ACTION: MOTION (Gilmour) Moved to table the request from Youbet.com, Inc. to amend "Track Relationships" section of operation plan

VOTE: 2 Aye (Gilmour, Thorne), 3 Nay (Walters, Davis, Metcalf). The motion failed.

ACTION: MOTION (Davis) Moved that the request from Youbet.com, Inc. to amend "Track Relationships" section of operation plan be denied

VOTE: 3 Aye (Walters, Davis, Metcalf), 2 Nay (Gilmour, Thorne). The motion passed.

ACTION: MOTION (Gilmour) The commission agrees that with respect to the complaint of Magna there is an obligation under the Youbet operating plan, not as a general policy matter but under this operating plan, to negotiate source market compensation for Oregon independently of whether or not the signal is received. Youbet must implement a plan for payment of source market fees to both Portland Meadows and Multnomah Greyhound Park on a going forward basis for this license application retroactive to the current license and current operating plan, effective as of July 1, 2004 through June 30, 2005. **This motion will not be construed to be a policy decision** (see tape for additional discussion).

VOTE: 5 Aye, 0 Nay. The motion passed.

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*The Commission conducted deliberations in private Executive  
Session to consider matters relating to pending cases*  
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At this point Commission Metcalf had to leave.

#### **10. Request by Chair Walters to Revisit Commission Membership in NAPRA vs. RCI**

Chair Walters asked that this issue be reviewed because there have been many developments in the industry over the last few years regarding membership. He presented a letter to the rest of the commissioners regarding the history and issues relating the NAPRA and RCI and suggested changing membership to RCI. Membership of this nature is similar to obtaining a vendor because of the vital regulatory services provided. He and Jodi both thanked Carol Morgan for her extensive input on the matter. Jodi noted that the ORC staff is in favor of staying with NAPRA and Jodi supports the staff on this issue.

Carol Morgan, ORC: She sent out a request for documents to both organizations and both responded promptly. Oregon was instrumental in the spin-off of NAPRA from RCI because there were certain needs that were not being met for the day-to-day regulation in our jurisdiction including getting current information from the database. They tried to make changes for three years before finally breaking away. NAPRA was also concerned with how the public funds from dues to the organizations were being spent. In the last two years there has been discussion about having one unified organization because it is difficult to get information between organizations. Attempts to merge ultimately failed in April 2004. RCI is actively courting Commissioners who are now NAPRA members to switch to them and is even offering limited time free memberships as an enticement. Carol noted the way the money is being spent is of grave concern in the current budget climate. The 2005 dues for NAPRA would be \$17,500 and for RCI would be \$25,000 plus \$100/month for access to the database. Carol feels we would have a difficult time justifying the difference in this dollar amount to state government. The ORC staff has worked with people who are members of each organization and based on those interactions still recommend that we stay with NAPRA.

Commissioner Metcalf asked if Carol tried to negotiate with RCI to get us the first six months of dues for free. Carol said they did offer free services to Oregon for six month but she disagrees with the concept on ethical grounds. She feels that as a regulatory agency we have to be sure our integrity is not questioned.

Chair Walters said that for him the decision to move to RCI would be very easy except for the concerns of the ORC staff. In terms of the dues structures, he understands from RCI that the hub handle would not be included in calculations which bring the RCI dues down to about \$7,000/year which is a substantial savings. There is an extra charge for the database but they have offered us a year of access for free. RCI is also in the process of revising that policy. Walters said he thinks we may even save a little money going to RCI but even if we didn't it would be close to a wash. Many of the initiatives started by NAPA have been adopted by RCI and they both offer basically the same information in their databases. In terms of ethics, he sees no problem with RCI making a big push to increase its membership. Walters is concerned to see other jurisdiction moving away from NAPRA and is concerned with instability at NAPRA. He wants to be sure that Oregon is aligned with the organization that is likely to become the dominant force. He said it also makes sense to join RCI because most of the states Oregon exchanges information with are members of RCI. Walters strongly suggested that we move to RCI but reiterated his respect for the opinions of the ORC staff, especially Carol.

Commissioner Gilmour said that both arguments are very persuasive but he feels that we should make the switch to RCI. Commissioner Davis deferred to Walters and will go with his recommendation but thanked Carol for all of her hard work. Commissioner Thorne said he would have to side with the staff because they are the ones that have to use the service to do their jobs as regulators.

**ACTION: MOTION (Gilmour) Switch membership to RCI effective January 1, 2005**

**VOTE: 3 Aye, 1 Nay (Thorne)**

#### **11. Request from Crooked River Roundup Association for Clarification on Ownership Issue of Stalls and Towers Purchased with Hub Funds Located at Crook County Fairgrounds**

Jodi Hanson: This is a request by the Director of Racing Doug Smith concerning the ownership issue of stalls and towers that were built in the last 2 years with hub funds. If Crooked River Roundup is considered the owner they would have to pay personal property taxes on the stalls of approximately \$900/year. Doug would like the commission to consider transferring ownership to these assets to Crook County as long as provisions are made for maintenance of the facilities and they are still available for use. Raul will research the legalities of this and report at the next commission meeting. This item was held over for the November commission meeting.

**12. Proposed Stipulated Orders**

**a. Kevin M. Ciula**

ACTION: MOTION (Thorne) Move to approve the stipulated order.

VOTE: 4 Aye, 0 Nay

**b. Jeffrey L. Grady**

ACTION: MOTION (Davis) Move to approve the stipulated order with the additional changes referenced by Raul Ramirez.

VOTE: 4 Aye, 0 Nay

**c. Patrick J. Kerrison – no action was taken**

**13. Proposed Settlement from Charles R. Williamson on Behalf of Joe A. Crispin – no action was taken**

*There being no further business, the meeting was adjourned.*