

# MINUTES

## OREGON RACING COMMISSION June 19, 2008

The Oregon Racing Commission met on Thursday, June 19, 2008 at 1:30 p.m. in Room 1A of the Portland State Office Building located at 800 NE Oregon Street, Portland, Oregon. Commissioners in attendance were Chair Kerry Johnson, Vice Chair Stan Robson, Chris Dudley, Michael Huber, DVM, and Charles Williamson.

Agenda items were discussed in the following order with resulting actions:

### 1. Approval of Agenda

Chair Johnson added agenda item 1a, Public Comment, after the approval of the minutes.

### 2. May 15, 2008 Meeting Minutes

ACTION: MOTION (Dudley) Approve minutes as submitted.

VOTE: 5 Aye, 0 Nay

### 3. Public Comment

⇒ Jerry Kohls, Assistant General Manager and Director of Racing at Portland Meadows, read a statement on behalf of Will Alempijevic, General Manager of Portland Meadows, requesting that the commission rescind TVG's Hub license pursuant to OAR 462-220-0030(3)(d and e) as TVG failed to negotiate in good faith a source market fee agreement with Portland Meadows.

According to the statement read by Mr. Kohls:

TVG arbitrarily sent Portland Meadows a first quarter payment that represented a more than 80% reduction in the source market fee compared to what was paid over that same period in 2007;

TVG stated that the first quarter payment was made in accordance with an adjusted calculation based on the current market and regulatory conditions;

TVG cited the Oregon Racing Commission's decision to license AmWest as one of its reasons for the reduction in the source market fees paid to Portland Meadows.

Portland Meadows had already executed source market agreements with AmWest that would compensate the horsemen's groups for their loss of revenue.

Portland Meadows did not object to TVG gaining their license during the last commission meeting on May 15, 2008 because they had believed that the historical agreement held between Portland Meadows and TVG since 2001 would be extended to the 2008-2009 licensing period.

Mr. Kohls also alerted the commission to the fact that Portland Meadows did not

have a source market fee agreement with Youbet.com.

- ⇒ Dick Cartney, Executive Director of the Oregon HBPA, explained that Portland Meadows negotiated with each individual ADW for a source market fee and, in turn, the OHBPA entered into a contract with Portland Meadows to receive a percentage of that fee. The percentage of the source market fee that the OHBPA received was then shared with the OTOBA and the OQHRA.

Mr. Cartney stated that source market fees had become a very important source of revenue for the horsemen and that they were concerned that if the source market fees were reduced substantially, the purses could suffer which might make it difficult for Portland Meadows to remain financially viable and remain open for business. He urged the commission to be aware of these issues and do everything that they could to make sure that racing continued in Oregon as it had in the past.

- ⇒ Brandy Stoeckinger, Executive Director, OTOBA, stated that the source market fees they received were used to pay their operational expenses and to provide incentive programs to the owners and breeders. She explained that the incentive programs helped make this business more lucrative and helped to entice new people into the industry. She stated that in 2007, the OTOBA received \$81,000 from the Hub funds and that they were concerned that if the revenues decreased, not only would it affect Portland Meadows, but the OTOBA would no longer have the ability to fund their programs.

- ⇒ Ron Sutton, Vice President of the OHBPA, asked the commissioners if they had any questions.

- When Commissioner Williamson asked if it would be advisable for the commission to adopt a rule that would allow the horsemen's group the right to participate in the good faith negotiations when the source market fees were being set, Ron Sutton replied that it would.

- In response to Commissioner Williamson's question as to whether the commission should clarify its rules regarding the fact that the commercial meet should have the written source market agreement with the ADWs, Ron Sutton replied that Portland Meadows, along with the horsemen, should have the source market agreement.

- When Commissioner Dudley asked if anyone in Oregon or nationally was trying to resolve this issue without the intrusion of state regulation, Mr. Sutton stated that there was a horsemen's group, THG (Thoroughbred Horsemen's Group), working on this issue, but that he felt Oregon should have a rule.

- In response to Chair Johnson's question, Mr. Dick Cartney clarified that the horsemen wanted the commission to establish a rule requiring a source market agreement, but they were not asking for a rule stating what those agreements should be.

- ⇒ Dave Nelson, Board of Directors of the OQHRA, stated that they received about

\$60,000 a year from source market fees which was critically important to the operation of quarter horse racing in Oregon. He explained that the association recently had a meeting regarding rebating and source market fees. He stated that rebating and source market fees were interconnected and that when rebating went up, source market fees went down. He described rebating as little more than aggressive price competition for the market.

According to Mr. Nelson, the argument that rebating should be addressed in the ADW's business model was not very compelling because racing was a highly regulated industry.

Mr. Nelson proposed the following options for the commission to consider that would address the rebating issue: approve the applications without rebating; approve a rebating contract that required a written agreement between the horsemen and the ADW; and/or set a percentage and allow rebating only within that percentage.

⇒ Roger Nyquist, on behalf of TVG, stated that they had distributed a proposed source market agreement with the Oregon fairs and currently had a tentative agreement with them. Based on Oregon rules, TVG was in compliance with the application requirements. He explained that the fairs were currently the only ones licensed by the commission to run live racing which made them the appropriate group for TVG to have a source market agreement. He added that when someone made an application to run horses live at Portland Meadows, that TVG understood that they had an obligation to negotiate in good faith an agreement for source market fees.

Mr. Nyquist further explained, "TVG was involved in the initial legislation in Oregon that created account wagering and source market fees were a component and a concept of that vision at that time. TVG has been a leader since then in paying source market fees. Four years ago when Magna bought Portland Meadows - there at that time was a written contract in place - Magna cancelled the contract. TVG, since that time, in good faith, has continued to pay source market fees. TVG also is anticipating, which is part of what you do in business, you anticipate regulatory and market conditions and try to position yourself in a way that you can make a living, TVG has anticipated the change in market conditions that will come about by aggressive rebating."

→ In response to Commissioner Williamson's question, "When you came before us last month, you actually didn't have a source market agreement in effect with anyone?" BJ Cosson, Vice President of Operations for TVG, responded, "At the time we came before the commission we had a verbal agreement with Portland Meadows. That agreement was contingent on the market not changing and things staying as they are in the State of Oregon and throughout the market itself. We believe that market and that market place has significantly changed and that's why, after the commission meeting - When we were here at the commission meeting, in good faith, we believed we had a good agreement and there was no issues before us. After that, with all the discussions about rebates and the change in the market place, the THG's position, we believed the market has significantly changed. That's why we decided that at that time we needed to change our source market fee agreement."

Mr. Cosson also provided the following clarifications: TVG had a verbal agreement with Portland Meadows for the past four years; TVG never set a set percentage for any source market fee in Oregon after the contract was terminated by Magna, but paid on a statewide basis; the verbal agreement this year was made with Will Alempijevic, the current General Manager of Portland Meadows, at the April 2008 commission meeting; and prior to Mr. Alempijevic, the verbal agreements were made with Dwayne Yuzik, Portland Meadows' previous General Manager. "It was simply a gentlemen's agreement between us, knowing that our two companies would not sign a contract with each other."

- Commissioner Williamson requested that the commission re-address this matter at the next commission meeting when Mr. Alempijevic could be present to answer questions.
- ⇒ Jerry Underwood, Manager of the Tillamook County Fair, verified that representatives from all five of the summer race meets, including John McCulley, Executive Director of Oregon Fairs, participated in a telephone conference on Monday with TVG to discuss a source market fee agreement. On behalf of all the race meets, Mr. Underwood read for the record the following statement: "We do not want to hurt another in the industry to better our position and we are concerned about being a pawn in a chess game between two large players; we won't win. We need to make sure when this comes to a court battle that we are not involved and if that means walking away, then we believe we better walk away."
- In response to Commissioner Huber's request for a clarification to that statement, Mr. Underwood explained that at the time of the discussion with TVG, they did not understand the ramifications or any of the interworkings with the hub dollars and the source market fees. He stated that the OHBPA, the OTOBA, and the OQHRA were very important to the summer race meets and that they didn't want to do anything that could affect the associations' participation in the summer meets.

*At this time, the commission entered into executive session and upon their return continued the meeting with the following agenda item:*

**4. The Racing Channel, Inc. 2008-2009 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License**

Joe Michaels, Vice President of Operations for The Racing Channel, and Ben Hayes, Legal Counsel, were present to answer questions. Information and discussions included the following:

They have been licensed in Oregon since 2001-2002 and there have been no changes to their application.

Mr. Michaels stated that they allowed computer assisted wagering, not computerized robotic wagering.

They did not have a rebate structure or an incentive program, but explained, that they did "take care of customers that have been with us for a long time, whether they bet two dollars or whether they bet \$200,000. And, we do take care of volume bettors."

⇒ When Commissioner Dudley asked what “take care of” meant, Mr. Michaels explained that it could be anything from a percentage of handle, to payment for a satellite dish. He added that it was not dependent on level of play, but a lot of different factors.

He further explained that they did offer some cash rebating, but it was based on percentage of play. He did not consider what they offered as aggressive rebating and stated, “We have some players that are betting less than a couple thousand dollars a month that I’m taking care of and we have some players that are betting a hundred thousand dollars a month that I’m taking care of.”

ACTION: MOTION (Williamson) Approve application as submitted.

VOTE: 3 Aye, 1 Nay, 1 Abstain, as follows: Dudley: Aye  
Huber: Nay  
Johnson: Aye  
Robson: Abstain  
Williamson: Aye

At this time, Vice Chair Robson excused himself from the meeting due to other commitments.

**5. Youbet.com, Inc. 2008-2009 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License**

Dan Perini, General Counsel for Youbet.com, was present to answer questions. Information and discussions included the following:

The current source market agreement with Portland Meadows was due to expire, and while they had begun negotiations, they had not yet reached an agreement. He added that they had also opened discussions with the OHBPA on the issue.

⇒ Gordon Tallman, Supervisor of Account Wagering Hubs, stated that an approval of the application at this time would have to be conditional upon obtaining a source market agreement with Portland Meadows.

They did not offer computerized robotic wagering.

Youbet.com had a very large and comprehensive player rewards and incentive program with the majority of it being merchandise, but they did have a limited program of cash incentives. He added he did not consider their cash rebates to be aggressive.

ACTION: MOTION (Williamson) Approve application conditional upon submission of a written, enforceable mitigation agreement with Portland Meadows prior to June 30, 2008.

VOTE: 2 Aye, 2 Nay, 1 Excused; the motion failed.  
The voting was as follows: Dudley: Aye  
Huber: Nay  
Johnson: Nay  
Robson: Excused  
Williamson: Aye

ACTION: MOTION (Williamson) Adjourn the meeting until all five commissioners were present.  
VOTE: 2 Aye, 2 Nay, 1 Excused; the motion failed.  
The voting was as follows: Dudley: Nay  
Huber: Aye  
Johnson: Nay  
Robson: Excused  
Williamson: Aye

*At this time, the commission entered into executive session and upon their return to the public session continued with the same agenda item:*

ACTION: MOTION (Williamson) Consider this application further only upon the condition that a written mitigation agreement with Portland Meadows be submitted to commission staff before June 30, 2008; however, if good faith negotiations can't be reached by that time, the matter will be re-considered at the July commission meeting.

VOTE: 3 Aye, 1 Nay, 1 Excused, as follows: Dudley: Aye  
Huber: Aye  
Johnson: Nay  
Robson: Excused  
Williamson: Aye

ACTION: MOTION (Williamson) Approve application as submitted with the adopted condition.  
VOTE: 3 Aye, 1 Nay, 1 Excused, as follows: Dudley: Aye  
Huber: Nay  
Johnson: Aye  
Robson: Excused  
Williamson: Aye

Commissioner Huber explained that he had been researching rebating since the last meeting which had changed his approach to the issue. He stated that he had unanswered questions and concerns about rebating and intended to continue to research the matter.

Commissioner Williamson explained that the commission as a whole had some concerns about rebating and he apologized that the hub subcommittee could not resolve the issue. He stated that it was his understanding the commission intended to have additional public meetings to continue to review the matter. He added that there might be rules adopted in the future that would affect rebating, but today they were not in existence.

**6. Churchill Downs Technology Initiatives Company 2008-2009 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License**

Brad Blackwell, Vice President, Twin Spires was present to answer questions. Information and discussions included the following:

There were no material changes to the application.

They did not offer computerized robotic wagering.

Regarding rebating, Mr. Blackwell stated, "We have a player rewards or incentive program that is consistent with the program we've been operating since we've been licensed in Oregon. It is not contrary to any rules or regulations in Oregon. There is a rewards system in place that includes merchandise and can be exchanged for wagering credits. It is a very minimal exchange and not aggressive by any stretch of the imagination."

ACTION: MOTION (Williamson) Approve application as submitted.

VOTE: 3 Aye, 1 Nay, 1 Excused, as follows: Dudley: Aye  
Huber: Nay  
Johnson: Aye  
Robson: Excused  
Williamson: Aye

**7. Racing 2 Day, LLC 2008-2009 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License**

Ben Hayes, Attorney for Racing 2 Day, and Vincent Caldwell, Vice Principal and Manager of Racing 2 Day, LLC, were present to answer questions. Information and discussions included the following:

⇒ As introduction, Gordon Tallman, Supervisor of Account Wagering Hubs, explained that Racing 2 Day had previously been granted a license to do business in the State of Oregon, but had not launched during that initial licensing period. They anticipated beginning operations next month and were reapplying for the July 1, 2008 through June 30, 2009 licensing period.

They did not offer computerized robotic wagering.

They did not intend to offer a huge rewards program, but might have some small rewards for players. He added that the players they were seeking would not be concerned about rebates.

ACTION: MOTION (Williamson): Approve the application as submitted.

VOTE: 4 Aye, 0 Nay, 1 Excused

**8. AmWest Entertainment 2008-2009 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License**

Nelson Clemmens, Principal Owner, and, Randy Boden, Chief Operating Officer, of AmWest Entertainment were present to answer questions. Information and discussions included the following:

⇒ As introduction, Gordon Tallman, Supervisor of Account Wagering Hubs, explained that AmWest Entertainment had previously been granted a conditional license in Oregon, all of those conditions had now been met. They had not yet launched during this licensing period, but had intentions to do so as early as tomorrow. The license was therefore considered

active and the application before the commission was a renewal for the July 1, 2008 through June 30, 2009 licensing period.

There business plan focused on the high volume play side of advanced deposit wagering market.

They were supportive of the THG goals and initiatives and were currently working with them to develop a template for the high volume wagering market.

AmWest's operations were located onshore as opposed to offshore where the predominant high volume play had taken place over the years. They operated four OTBs, three were located in South Dakota where they held a simulcast service provider license and an advanced deposit wagering license. They provided approximately 90% of the purses for the horsemen in South Dakota. He added that they were also licensed in Louisiana and had an OTB site that provided supplemental payments to the horsemen there.

There program included providing an administrative terminal for the ORC, or any other regulatory body as appropriate, to track and monitor the wagers per player, per day, in conjunction with a player tracking system.

They conduct criminal background checks on all of their players, including requiring attorney opinion letters, if necessary.

Over and above ORC regulations, AmWest required their banking, money management and player accounts to be located in Oregon. Mr. Boden stated, "Having the banking involved here provides a whole other layer of security because the bank has its own due diligence that they do and that's totally independent and separate of anything AmWest does in terms of criminal background. And, AmWest is not privy to that information, only a yea or nay from the bank is what's given, but it does add that extra layer of security that we have people who are who they say they are and reside where they say they reside."

⇒ When asked by Chair Johnson as to whether they sold a portion of their company in South Dakota to another group, Mr. Clemmens responded, "We did not. There was a funding transaction that we subsequently restructured that was not under our goal to gravitate to Oregon. It just wasn't applicable. When we did the application here, there was not a transaction. We did do a funding transaction and we unwound it in South Dakota and it was not because of any concern for the background of Mr. Govoni. He's absolutely more than creditable. It was really not through him, it was specifically through a trust and it was a timing issue with the South Dakota Commission on Gaming and our desire to gravitate our license to Oregon. It was just odd timing like many things in life."

They did not offer computerized robotic wagering.

Regarding rebating, Mr. Clemmens stated, "Our rebate will be predicated on the rate structure in the industry and that's why we are very supportive of the THG and the other industry initiatives. If the rates and the track, the horsemen and track payments, are at a certain level it only leaves a given

margin for rebating. One of the most constructive dynamics the last year in our industry has been that rates have increased. I think where we looked at several years ago with rates in the 3% range, now you're looking at 7 and 8 % rates. As certain tracks and the THG and, if you will, the forces in the industry come together, I trust we'll find a level." He reiterated that they were focused on the high volume player and their approach gave them the best opportunity to increase revenues for the horsemen and compete against other forms of gambling.

⇒ In response to Chair Johnson's question as to when the rebates were paid out, whether it was based on daily play, weekly play or paid at the end of the year, Mr. Boden explained that it was set up individually with each player through a player agreement. He added that it could run from one or two weeks to the end of the month.

Mr. Boden explained that the first player approved by AmWest to begin playing in Oregon was a non-rebate player. The only other player approved was a very low rebate player with percentages similar to the player rewards programs that the other ADWs discussed during the meeting today.

ACTION: MOTION (Williamson) Approve the application as submitted.

VOTE: 2 Aye, 2 Nay, 1 Excused; the motion failed.

The voting was as follows: Dudley: Aye  
Huber: Nay  
Johnson: Nay  
Robson: Excused  
Williamson: Aye

⇒ Assistant Attorney General Kelly Gabliks stated, "We have a two-two abstention vote that does mean the motion fails. I would like to let you know under current law, ORS 183.430, because you have a current license and your license is subject to periodic renewals, your license continues to be valid until the commission takes a final action on your license. What that means is that your license does not expire on July first. What the commission has done today is they have voted their intent, at least as of today, to deny your license. In order to officially deny your license, what will have to happen is a Notice of Intent to Deny Licensure will have to be drafted and served on you. Then, you will respond to that. We would have to go to a contested case hearing. We would have to have a hearing and then a proposed order comes out and so there's a long process to get to a final determination. It is only after there is a final determination that your current license would cease to be valid."

⇒ Commissioner Williamson requested that this application be put on the July agenda when all five commissioners would be present.

⇒ Chair Johnson explained that her concerns were with the aggressive cash rebates and stated that the commission subcommittee was working on trying to come to a decision on the issue. She added that she believed that aggressive cash rebates were not in the best interest of horsemen in Oregon or horsemen on a national basis.

## **9. Sub-Committee Update Reports**

### **a. Medication Subcommittee Report**

Commissioner Dudley explained that the subcommittee made up of himself and Dr. Huber along with Dr. Stacy Katler and Executive Director Randy Evers had met twice and that they had prepared a draft of medication rules which would be addressed at the rules hearing in August.

### **b. Budget Subcommittee Report**

Chair Johnson explained that Commission Robson was the Chair of the budget committee and that they had a meeting scheduled for July 9<sup>th</sup>.

### **c. Best Practices Subcommittee Report**

Commissioner Dudley explained that Oregon's Department of Administrative Services (DAS) asked each board and commission to adopt a best practices performance measure and that he and Vice Chair Robson had prepared a draft of that performance measure. There were fourteen questions that needed to be asked of the commission, individually and then as a whole. He stated that the questions, for example, would help the commission gauge how it operated, the consistency of its activities compared to the mission statement, how they made policy, how well it communicated with the public, and whether the commission's budget and goals were aligned. The timing required that this analysis be submitted to DAS along with the commission's budget. Commissioner Dudley requested that the commissioners review the draft and that it be placed on the July meeting agenda for possible action. He anticipated that they would be able to have performance data for the executive director by September.

## **10. Action on Final Order for Jody R. Davidson**

ACTION: MOTION (Dudley) Adopt the Proposed Order as the Final Order

VOTE: 4 Aye, 0 Nay, 1 Excused

## **11. Action on Final Order for Brian E. Ramerman**

ACTION: MOTION (Williamson) Adopt the Proposed Order as the Final Order and have Edge of Money disqualified, the order of finish revised, and the purses distributed pursuant to the applicable statutes.

VOTE: 4 Aye, 0 Nay, 1 Excused

## **12. Confirmation of Next Commission Meeting - July 17, 2008**

All commissioners present indicated that they would be present at the next meeting.

## **13. Public Comment**

⇒ Dan Kelleher, Industry Consultant, who was previously Vice President of Sales for Scientific Games and who had initially helped United Tote establish a tote in Oregon, spoke on Nelson Clemmens and AmWest's behalf. He clarified that he was not affiliated with AmWest Entertainment. He stated, "This is one of the good guys in the industry. There are a lot of organizations that come before you and there are people who do nothing but draw revenue from salaries or whatever from the industry. This is an individual who is not only investing personal funds as an owner, as a breeder, back into the industry, but he's also an individual who is working with the THG. While other people are sitting on the fence, afraid to go first, afraid to do anything

that might move the industry forward, here's a guy who's actually trying to work in collaborative fashion with the THG to try to make some positive change for the industry. So, when you look at the application, you might say, hey, provide some guidance, do something, but this is one of the good guys in the industry and I think you really owe it to him and owe it to the industry to really keep an open mind with how you rule on his application in the future."

There being no further business, the meeting was adjourned.