

MINUTES

OREGON RACING COMMISSION JANUARY 22, 2004

The Oregon Racing Commission met on January 22, 2004, at 1:30 p.m. in the Turf Club at Portland Meadows located at 1001 N Schmeer Road, 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. Chair Walters thanked Portland Meadows management and staff for offering to host the commission meeting this month which was the result of the scheduled date needing to be changed. Agenda items were discussed in the following order with resulting actions:

1. Approval of December 18, 2003, Minutes

ACTION: MOTION(Thorne) Approve minutes as submitted.

VOTE: 4 Aye, 0 Nay

2. Approval of January 14, 2004 Telephone Conference Minutes

ACTION: MOTION(Gilmour) Approve minutes as submitted.

VOTE: 4 Aye, 0 Nay

3. Portland Meadows Race Meet Report

Patrick Kerrison presented the handle report for November and December, concentrating not on the live but on the OTB handle. The bottom line MEC Oregon Racing Inc. lost approximately \$90,000 during December when the surcharge was lifted. Chair Walters confirmed that the surcharge has been reinstituted. The Sunshine Millions will be taking place this coming weekend. A Sunshine Millions baseball cap will be given away to everyone who opens up a new Express Bet account. Mr. Kerrison also reported there is a new wager called the Magna Five, which is a national pick 5 wager with a guaranteed pool of \$500,000 every Saturday. All races will come out of Magna tracks. They expect to open up a new OTB called the China Grill in Charbonneau, and they are hoping to be able to open up the 20th sight in Newport in the very near future.

Chair Walters inquired as to how well the overall handle, including simulcast and live, was doing. Jeff Grady reported the total handle was down a little bit due to the weather affecting both the live racing and simulcasting for a few days. Currently they are down a little bit but not enough to cause concern. Chair Walters also inquired about their plans for making up the lost race days due to the weather, to which Mr. Grady responded by saying they were having discussions with the HBPA regarding specific dates. The question was raised by Chair Walters as to whether or not the Magna Five wager had been submitted for approval by the commission. Mr. Kerrison understood that they had approval for a Pick 5 wager.

4. Housekeeping Corrections on Final Order for Jody R. Davidson

Raul Ramirez stated that at the time the final order on this case was adopted there was some language that inadvertently was not changed from the amended proposed order. Apparently that language was likely to cause some confusion at the appellate level, so the Appellate Division requested

that the commission make the corrections so that there would not be any confusion as to the intent of the commission in the written order. Mr. Ramirez recommended the commission make a motion that the Appellate Division be allowed to final a notice of withdrawal of the final order in the present case and a second motion that once that is completed that the commission would adopt the corrected final order as the final order in the case and instruct the executive director to sign it after she has been notified that the filing of the withdrawal of the order has been completed.

ACTION: MOTION(Thorne) Adopt the recommendations presented by counsel.
VOTE: 4 Aye, 0 Nay

5. Confirmation of Next Commission Meeting – February 19, 2004

All commissioners plan to be in attendance.

6. Amendment to Operations Plans of Oregon Hubs US Off-Track and America TAB

Following is a transcript of discussion on this item:

Walters: Next item on our agenda is the Amendment to the Operation's Plans of Oregon hubs' US Off- Track and America Tab. Jodi could you present this issue for us?

Hanson: Unintelligible.

Walters: Yeah, actually, Ben why don't you come up and uh ...

Hayes: Thank you. I'm Ben Hayes, attorney for US Off- Track and America Tab. Go ahead.

Walters: Ben -describe for us what the proposal is and the background of it, if you would please.

Hayes: The hubs are looking for new opportunities for their bettors to be placed on the wagering menu. This request will allow the hubs to include foreign, non-merged pools on their wagering menu. And in review of Oregon law, Oregon Administrative Rules clearly contemplate for wagers being made into merged pools, as well as nonmerged pools. In fact, there is one specific provision in the Oregon Administrative Rules that talks about the tax rate for non-merged pools. In reviewing federal law, the exemption under the Wire Act is clearly applicable. The Wire Act contemplates foreign wagers. It also contemplated non-merged pools. With regard to the Interstate Horseracing Act, it's not applicable because it's only applicable to interstate transactions. This request involves foreign commerce. Other than that, it's a pretty simple, straightforward request.

Walters: In the Application as presented to us, with the Amendment to the Operating Plan, specifically to allow US Qff- Track and America Tab to place wagers into I believe it's called, Euro Off- Track in the Isle of Man. Correct?

Hayes: Yes, that is correct.

Walters: And you've submitted information regarding the legality and regulation of Euro Off- Track in the Isle of Man.

Hayes: The actual legal memorandum I provided pertains specifically to Oregon law and to US federal law. I do have the statutes available from the Isle of Man, but I also believe the Oregon Racing Commission already has those. But, if you want me to submit those, I will with specific citations. But, in essence, all the permits and licenses required under Isle of Man law have been obtained -are in their possession. Euro Qff-Track is a joint venture between US Off- Track and betintemet.com. Betintemet.com is a publicly traded company on the London stock exchange. It has been operating for several years now and participates in pari-mutuel pools globally. And so this is just another opportunity that the hubs may have in offering bettors opportunities to wager on horse races.

Walters: And just so we're clear, this Amendment would allow bettors of US Off- Track and America Tab to bet in non-merged pools operated out of the Isle of Man on US racetracks.

Hayes: US tracks, foreign tracks.

Walters: I recognize that. But for example, it would be, if we approve it, this would be an option for the hubs that rather than doing a merged pool at, for example, Aqueduct, you could do a non-merged pool through this --to this other option.

Hayes: That's correct.

Walters: And so, I just want to get clear about the nature of it. This isn't saying well here are additional tracks that US bettors could wager on, although there would be some additional tracks probably worldwide. This would be the ability to wager on US tracks in a non-merged pool offshore essentially.

Hayes: I don't really believe the word "offshore" is appropriate because I think that connotes the Caribbean and Antigua....

Walters: I understand that. By offshore I mean by non United States.

Hayes: Yes, in a foreign country. Yes.

Walters: The idea is that it would be a legal and regulated entity in a foreign country.

Hayes: That is correct. And just so everybody's real clear, the Isle of Man is not some island sitting in the Caribbean, which is unregulated. It's a highly regulated environment. It's one of the banking centers for Europe. They have made a very large push towards e-commerce. Their pipeline utilizing the internet is ten times greater than all of Europe/United States traffic combined. And the banking industry in Isle of Man has been around for many centuries. It's been a banking center, shipping center, so it's not an unregulated environment.

Walters: I have some thoughts about what we should do with this Application today. But first I'd ask if other members in the Commission or Jodi have questions they'd like to ask of Ben regarding the nature and background of this request. We don't distinguish between other some Offshore, I mean, non-United States.

Thorne: Yes. I received this two days ago. And uh, I don't, I guess I'm fairly comfortable of the fact that perhaps the request is legal as it pertains to our statutes and federal law , but I guess the real question is, is there a need for it and what are the benefits? And that's something I'm not convinced of and I would have to spend a lot more time trying to investigate those issues. But, if you have a statement to that, I would entertain that.

Hayes: Yes, there is a need. Bettors are always looking for more opportunities to wager on products. And, this gives the hubs an opportunity to provide those bettors with more opportunities. One recent international opportunity that happened is the Fairgrounds in Louisiana hosting pools for a week on the Dubai Classic. The Fairgrounds will be hosting a non-merged pool and allowing bettors around the world to place wagers into that pool on the races that are occurring in Dubai. There might be opportunities like that that would be provided by Euro Off- Track.

Walters: And let's again, just be clear about the environment for our hubs. The issue of exclusivity is an issue that has been around since the first hub application we approved. You weren't here, I think I may I may be the only one, the only survivor of the meeting in Grants Pass, where we approved TVG's Application. And a very contentious issue at that hearing was their practice of obtaining exclusive contracts with racetracks, so that they would be the only hub with access to that product. And the attitude that the Commission took at that point was that this was a market issue. And that hubs, competing hubs, could convince the racetracks that it wasn't a good thing for them to do, they would negotiate and bargain. TVG felt that the exclusive contracts were a very important part of their business plan, their business model. So the Commissioner approved it and didn't take action against the exclusive contracts. Since then, the issue of exclusivity has gotten bigger and so there are other racetrack operators who are now

saying if you want to bet on our racetrack, you have to do it through another hub. And consistent with our prior rulings on this, our prior action, it is likely to be the Commission's position, although I can't speak for all the Commissioners, that we would say well again, that is a market issue. They choose to do that and they are not violating any laws. That might be a competitive decision they may have a chance to make. The other side of that coin is the hubs who would be shutout of those racetracks. Is it unfair or is it bad policy for them to have options, legal options, to offer their bettors wagers into non-merged pools on racetracks that refuse to allow them to be part of their merged pools? So I mean there is a large issue out there about what is going on in "hub land," and the competitive issue is raising issues about the market and how it should behave and how it should operate and what the role of regulation is in all of that. So, yes it does provide additional options that bettors and tracks and things like the wagers on Dubai, but it also potentially provides an option for customers of hubs that are being shutout of having access to certain products.

Hayes: Just to make sure, I did a very exhaustive review of federal law on this issue, and I'm pretty confident that there is no illegality in doing this. It's perfectly legal, it's very straightforward and our hubs ought to be able to have that opportunity.

Thorne: I don't, you know, as far as the legal part of it; I don't think I disagree with you. I just, I in my own mind before I would be able to really have a true opinion on it, is I need to understand all the ramifications of it. I mean, there's an upfront question, but with respect to hub activity and dynamics of hubs, this can lead to some ramifications that I need to fully understand, and I think it's a pretty deep issue that I think needs some time for me to analyze myself. That's kind of my thinking.

Hayes: Any time that you have any questions or you want to contact me and discuss any issues, I'd make myself available.

Thorne: I appreciate that.

Walters: That sort of leads into some comments I was going to make about what Jodi and our Commission staff have been doing to analyze this proposal. The first thing is, it was shipped to Raul to vet the legal analysis. I did a quick review of it, and frankly, in my initial take on it, was that the analysis, legal analysis submitted by US Off- Track and America Tab was correct about the application of our rules and our law and federal law. But obviously something, which I think this is very important, needs to be reviewed by our general counsel and for him to give us some advice on it, and he has not had the time to complete the review for probably the same reasons the rest of us have had time to complete that. In addition, Jodi and the staff have been looking into the issues of Euro Off- Track and the legal atmosphere and the regulatory atmosphere in which it operates in the Isle of Man because we certainly wouldn't approve this if it were some fly-by-night jurisdiction where anybody with a laptop can setup shop and declare themselves a hub and start taking bettors out of the United States. So, they've been working very exhaustively at those issues. The third thing that we have done, is we have made known this proposal, I mean there are certain parts of that are not public, there are certain parts of it that are. But we've certainly made the fact of the proposal, first of all to Magna, and then to our other hubs. And again, this is a significant enough issue that I think is important that we get different views and comments and sort of public record views and comments from, for want of a better word, stakeholders in this process. I got a letter yesterday from Magna, observing that they found out about this on, I believe, Tuesday, and they didn't have the ability in that period of time to put together a letter or a set of public comments. I would anticipate that we might even have testimony regarding this proposal because it does have larger ramifications, even if it's legal in which, as I say in my own view right now, I think it is, subject to the advice that we get from Raul. So, that is what we are doing. And for those reasons, my own thought is that Ben, you got another trip to Oregon next month.

Hayes: (Jokingly) Can I submit a request for hub funds on that issue?

Walters: It's a long line, it's a long line!!

Thorne: You better move to the back of the room then!!

Walters: Are there other thoughts or comments by other Commissioners?

Gilmour: Yes.

Walters: Commissioner Gilmour.

Gilmour: Thank you, Chair Waiters. I think you covered a couple and Commissioner Todd did too. One of the things that I am thinking through myself, Ben, assuming all of the legal ramifications are okay. ...I didn't see what we used to call in the old days, a fiscal statement. What is this going to mean to Oregon? Do you have any idea, any projections, any guesstimates?

Hayes: I really can't. I can tell you that under the Oregon Administrative Rules the tax rate on non-merged pools is one percent versus half a percent. ..

Walters: Quarter percent, but if you want to give us a half...

Hayes: No, I don't unless you accept my request for hub funds. I'm sorry, it's a quarter percent and then one percent for non-merged pools.

Gilmour: Okay.

Hayes: So the Administrative Rules clearly contemplated from day one, non-merged pools.

Gilmour: And in your business plan, which I am sure is wrong terminology, are you contemplating more people betting?

Hayes: Sure. I mean, whenever a hub has more products to offer its customers, it naturally attracts more customers to bet on those products. And if hubs have products for example, that are in, I don't know, a specific country, you might be able to draw more customers from that country. For example, just off the top of my head, if the hubs were going to do UK races or Irish races, it might draw customers from those countries to be able to wager into those pools.

Gilmour: Mr. Chair, I don't mean to be continuing leading the witness.

Walters: You haven't gotten an objection yet.

Gilmour: No. And Ben, this application that you've presented us is from both US Off- Track and America Tab, correct?

Hayes: That is correct.

Gilmour: Have you had a conversation with any of the other hubs?

Hayes: Yes, I have.

Gilmour: Are there interest in joining you or interest in stopping you?

Hayes: I have not heard of anybody interested in stopping us yet. Urn, and that's about as much as I can say.

Gilmour: Well, that's fair, I just...

Hayes: I will say that the others are just watching, listening.

Walters: And you lead to an excellent point. The reality is if we approved it for these hubs, if other hubs requested it, I couldn't see any basis for us not approving it for them, as well.

Gilmour: And one question that I apologize that I don't know. Is US Off- Track or America Tab also licensed in California as a hub?

Hayes: No sir.

Gilmour: Either America Tab or US?

Hayes: I can say for a fact US Off- Track is not. America Tab, I do not believe it is.

Gilmour: Okay. And if they were, would they be making the same request in California?

Hayes: I have no idea.

Gilmour: Just points that I'd like to understand that the other states that license hubs of whether there is a tendency to head in the direction you are proposing there also, or is there something that you are aware of that they might prohibit the other hub licensing states from allowing that to happen.

Hayes: Commissioner Gilmour, I'm not aware of any.

Gilmour: Fair answer.

Metcalf: Sir, I have a question, as well for Ben. So, if Oregon licenses this and it is supposed to reap the benefits, is it just of horseracing, or is it of other betting, as well as...

Hayes: It's just on horseracing right now. Any other expansion of that would obviously need an Amendment to their Operating Plan.

Walters: We could do greyhound racing and we could do mule racing and other. ..

Hayes: And that's it.

Walters: Euro Off- Track does a lot of things that we are not in a position to license you to do.

Hayes: Absolutely. No. This is only limited to horseracing.

Walters: No jai alai. No

Metcalf: Soccer?

Hanson: Urn, I was...

Walters: Jodi.

Hanson: Yeah, thank you.

Hayes: Unless Oregon wants to change their rules.

Gilmour: Well, if it's pari-mutuel betting, I think we can probably work something out. (Laughter.)

Hanson: Well, before I ask my question, since out of state travel is limited by the state, I think we should put a collection plate right up here, so I can go over there and personally inspect this on the Island of Man. Urn. ..

Walters: I'm not sure you want to do it during January or February.

Hanson: No. I was wondering if you could explain or talk at all about how it would appear on the website. Would the bettor know that they were going through ---would they know they're going through Euro Off- Track? They wouldn't know anything about Euro Off- Track?

Hayes: I don't know anything about it on that end. Sorry.

Walters: I would hope that bettors would know because it would be going in a non-merged pool and if it's pari-mutuel wagering that would set the odds and so the pool odds could be vastly different than the merged pool odds. And I would certainly expect that would be disclosed to the public.

Hayes: I would expect that as well. Everything that I have ever seen US Off-Track do and America Tab do, they've been very straightforward with their customers.

Hanson: Okay, thank you. And I also want to say that we've made contact with the regulatory folks over there and I have like a stack of stuff as far as their rules and regulations. And we also started researching Euro Off-Track several months ago for another matter, so I can say that it is highly regulated.

Walters: Other questions or comments? My proposal would be that we do defer this request to the next meeting. It is now definitely public. Everyone has notice on the Application and my expectation would be that we would act on this request and amend the Operating Plan at our next meeting. And we have a couple more pieces that anyone who wants us to make comments, obviously, we aren't going to make anybody submit a comment, but anybody who wants to, whether it's another hub, whether other to horseracing members of the industry, whether it is a racetrack licensee, specifically, Magna, please make them. The issue is out here now, and any comments need to be submitted certainly in time to go out with our board packets, for the next meeting, which is what?

Hanson: The 19th.

Walters: The meeting is the 19th. And the board packets go out ten days prior. And in addition, if people do want to testify about this issue, and again, we should notify the other hubs and we're notifying Magna right now, since their representatives are here that we should be notified about that too. By then we will have our legal analysis from our general counsel and the completion of the regulatory analysis by our staff, and we will be ready to act at the next meeting.

Hayes: Thank you.

Walters: Thank you very much, Ben.

Hayes: Okay.

7. Request by Al Westhoff to Address the Commission Regarding Distribution of Tier 2 Hub Funds

Al Westhoff, JCF, and Rod Lowe, SOHRA, were present regarding the dirt project at Josephine County Fairgrounds. Mr. Westhoff reported that he had made an error in the formula format that he used when making the request for hub funds for the dirt project. He then summarized the process he had used beginning with his initial contact with the commission about the project following the completion of their 2003 race meet. Since he has now revised the request to reflect the correct formula and after reviewing the format the commission used to allocate the hub funds, he stated he was hopeful the commission would reconsider their revised request for funds for an additional \$11,500. Chair Walters stated his understanding the reason for this request is that Mr. Westhoff felt there was a mistake in the way it was presented and that it might have not been clear when the subcommittee made its allocations. Mr. Westhoff stated the donation of the dirt was not correctly placed in the formula as part of the total cost. Commissioners Gilmour and Thorne then asked questions for further clarification on the project itself and on the request for funds. Following the discussion, Chair Walters suggested that the commission delegate authority to the Hub Fund Sub-Committee to make a decision on this request and implement it.

ACTION: MOTION(Metcalf) Delegate the issue to the Hub Fund Sub-Committee to resolve on behalf of the commission.

VOTE:

4 Aye, 0 Nay

8. Discussion on OAR 462-140-0379(4)(c) - Ability to Hold a Dual License as a Jockey

Agent

Jodi Hanson stated this was a matter that came up regarding jockey agents not being able to be licensed in any other category at the same time unless written permission is granted by the stewards. Jim Smith reported the stewards had granted two individuals licenses to be jockey agents who were also doing other things on the racetrack at the time. As a result of some complaints regarding these two people having dual licenses, a meeting was held with all of the jockey agents. At the meeting all of the jockey agents were not concerned that the two individuals were licensed as jockey agents but that they had more access to their riders during racing hours. In 1995 when John Brown came before the commission to request permission to be a jockey agent while also working as a valet, the request was granted with the condition that if no complaints were filed the stewards would allow the multiple licensing to continue. As of that meeting, the two individuals were allowed to continue their work week and made the decision that they would lose their privileges as jockey agents as a result of the complaints the stewards had received from the other jockey agents. Chair Walters stated he felt the current rule was pretty clear on the matter in that they can't perform any other duties unless written permission is granted by the stewards. When the stewards grant a license, the individual has written permission to perform the other duties. The stewards have the authority they need to allow them to judge similar situations on a case by case basis whether or not to give permission for dual licenses.

9. Lisa Metcalf

Commissioner Metcalf called attention to a notice of a special dinner meeting sponsored by Northwest Equine Practitioners Association which is open for all horsemen/horseswomen to attend. This year an equine veterinarian from Oklahoma, Dr. Andy Anderson, who is actually an equine behaviorist will be the guest speaker. His presentation includes a lot of information on training and handling. The date is February 23, 2004, at the Canby Conference Center, and the cost is \$15 for the dinner and presentation.

10. Steve Walters

Chair Walters commented that the year 2003 ended with Baquero of Oakhurst Thoroughbreds being listed as the 43rd leading first crop sire in the country, which is a remarkable achievement for an Oregon stallion. He also noted Baquero had the lowest published stud fee on the list. Chair Walters offered his congratulations to Oakhurst Thoroughbreds and he hopes that Baquero and all of the stallions in Oregon will continue to do well in 2004.

There being no further business, the meeting was adjourned.