

NORTH DAKOTA RACING COMMISSION

Live Meeting

Friday, July 18, 2008

12:00 p.m. (central time)

500 North 9th Street, Bismarck, ND

Call to Order:

Chairman, Patrick Weir, called the meeting to order at 12:01 p.m. Chairman Weir, Commissioners Frederick, Pladson and Secrest were in attendance. Commissioner Satran was absent (arrived at 12:20 p.m.).

Present:

Commissioners: Chairman Patrick Weir, Medora; Clarence Frederick, Belcourt; DeAnn Pladson, Fargo; Tom Secrest, Hettinger; and Winston Satran, Bismarck. Also present was Legal Counsel, Bill Peterson; Director of Racing, Randy Blaseg; and Administrative Staff Officer, Helen Tessmann.

Others Present: Debbie Eisenhauer, Janell Cole (Fargo Forum), Kevin Scherbenske, Dan Cox, Heather Benson, John Bubel, Les Schmidt, Mona Hurt, Roger Thompson, Jon Rivoli (Bismarck Tribune), Beth Baumstark, and Richard Nevins.

AGENDA

1. **Welcome and Introduction of new Commissioner**
2. **Legal Counsel's update on the Major Splash Bac Jet issue**
 - Possible Executive Session
3. **Approval of Minutes** – April 24, 2008 Meeting
4. **State Auditor's Audit Report for Biennium Ended June 30, 2007**
5. **Independent Auditor's annual audit review of 2007 Breeders' Awards**
6. **Outdoor Recreation Development Association**
 - 2008 Race Meet Report
7. **Administrative Services for the ND Bred Registry and ND Breeders' Fund**
 - Hiring of new contractor/vendor
8. **State Employee Compensation Adjustments**
 - By legislative direction for general increase of 4% for 2nd year in 07-09 biennium. Effective July 1, 2008
9. **ND Racing Commission – Budget**
10. **Regulator and Racing Seminar – Deadwood, SD – September 8 - 10th**
 - Approval of attendance and expenses
11. **Horse Race ND Goals and Future Plans Presentation**
12. **Horse Race ND's request of additional \$120,000 from the Promotion Fund**
13. **Horse Race ND's variance request to remove age restriction on ND Certified Bred Horses**
14. **ND Horsemen's Council Recommendations**
 - Fair Circuit Horse Racing Association – status of dispute
 - Other Issues

15. **Proposed 2009 Legislative Issues**
- Deadline for any bill drafting – December 4, 2008
16. **Service Provider Application**
- Silks Corporation
17. **Simulcast Auditing**
18. **Any other business which may PROPERLY come before the commission**
19. **Adjournment**

1. **Welcome and Introduction of new Commissioner**

Chairman Weir announced that Mr. Winston Satran was appointed as the new commissioner to the ND Racing Commission replacing Dr. Jim Clement. Chairman Weir added that Mr. Satran would be about 30 minutes late and would be introduced to the public when he arrives.

2. **Legal Counsel's update on the Major Splash Bac Jet issue**
- Possible Executive Session

The Chairman announced "the next item on the agenda was Peach versus the ND Racing Commission. This item will be discussed in an executive session. The legal authority for closing this portion of the meeting is North Dakota Century Code section (s) 44-04-19.1. The topic or purpose of this executive session is attorney/client consultation. At this time, a motion would be in order to discuss the next topic in executive session rather than in an open meeting. Is there such a motion? "

Commissioner Pladson made a motion to go into **Execution Session** in regards to Peach versus the ND Racing Commission. Commissioner Secrest seconded the motion.

The Chairman asked if there was "Any discussion on the motion?" and with none the Chairman asked all in favor of the motion to signify by saying aye. (Secrest-Y/Weir-Y/Pladson-Y/Frederick-Y, Satran-Absent) Hearing no negative vote the motion carried.

The Chairman continued "The executive session will be recorded and all members of the governing body are reminded to limit their discussion during the executive session to the announced topic. Any collective decision, collective commitment, or other final action by the governing body must occur after it reconvenes in an open meeting, unless final action is specifically required by law to be taken during the executive session. The prohibition on taking final action during the executive session does not apply to providing guidance or instructions to our attorney or negotiator.

We will now ask the members of the public who are attending the meeting to leave the room. We anticipate adjourning the executive session, and reconvening the open portion of the meeting, at approximately 12:30 p.m."

The minutes will show that the executive session began at three minutes after 12:00 p.m. and attended by Chairman Weir, Commissioners Pladson, Frederick, Secrest, Legal Counsel Bill Peterson, Director of Racing Randy Blaseg, and Administrative Staff Officer Helen Tessmann. Commissioner Satran arrived at 12:20 pm. The executive session was adjourned at 12:24 p.m.

The public was invited to return to the meeting room and the commission meeting was back in open session. Director Blaseg took the roll with Chairman Weir, Commissioners Secrest, Pladson, Frederick and Satran all in attendance.

Chairman Weir welcomed and introduced Mr. Winston Satran as the new Commissioner who was appointed by the Governor. Mr. Satran is filling the vacancy created by the expiration of Dr. Jim Clement's term which expired on 06/30/08.

Chairman Weir explained that after discussing with Legal Counsel in Executive Session the matter of the Major Splash Bac Jet situation is now open to the public portion of the Racing Commission meeting.

Commissioner Secrest made the motion to seek remand of the Peach versus NDRC and that the case is remanded to adopt the Administrative Law Judge's recommended finding and facts, conclusion of law and order. Commissioner Pladson seconded the motion. After hearing no further discussions, Chairman Weir asked for all in favor of the motion to signify by saying aye. (Weir-Y, Satran-abstained, Frederick-Y, Pladson-Y, Secrest-Y. Hearing no negative vote, the motion carried.) Legal Counsel was instructed to prepare the necessary paper work.

3. Approval of Minutes – April 24, 2008 Meeting

All commissioners had previously received a copy of minutes of the April 24, 2008 Commission meeting. After no corrections, additions or deletions to the minutes the Chairman asked for a motion to approve the minutes. **Commissioner Pladson made the motion** to approve the minutes. Commissioner Secrest seconded the motion. Chairman Weir asked all in favor of the motion to signify by saying aye. All commissioners voted aye and hearing no negative vote the motion carried.

4. State Auditor's Audit Report for Biennium Ended June 30, 2007

All commissioners had previously received and reviewed a copy of the audit report. Chairman Weir informed that he had attended the meeting of the Legislative Audit and Fiscal Review Committee. Chairman Weir asked to have the Audit Report be considered and asked the representative from the State Auditor's office to present the report. Chairman Weir suggested reviewing and voting separately on each of the State Auditor's recommendations. Mr. Kevin Scherbenske presented and explained each of the State Auditor's recommendations.

The Recommendation for the Administrator's Account for Breeders' Award:

Director Blaseg explained the contractor will determine who receives the awards and what placing the horses have as to 1st, 2nd or 3rd. The independent auditor will determine the formula for a win, place or show and the dollar value. Administrative Staff Officer Tessmann explained all horsemen who will receive awards will need to be registered as a vendor with the Procurement Office in order to be assigned a vendor's number for an award payment check to be issued on the state's accounting system. For this process the horsemen's will need to complete a W-9 form before a vendor's number can be issued.

Commissioner Satran made the motion to adopt the State Auditor's recommendation that the ND Racing Commission have the fund administrator calculate the breeders' award payments and provide that information to the Racing Commission for payment through the state's accounting system. That the local bank account (administrator's account) be closed and the remaining balance be returned to the breeders' fund at the Bank of North Dakota. Commissioner Frederick seconded the motion. Chairman Weir asked all in favor of the motion to signify by saying aye. All commissioners voted aye and hearing no negative vote the motion carried.

The Recommendation for the Tax Collection on Simulcast Wagers:

Commissioner Frederick made the motion to adopt the recommendation that the ND Racing Commission ensure reports for AmTote handle information be received by the simulcast auditor directly from AmTote, rather than routed through the simulcast provider where they could be changed. Commissioner Secrest seconded the motion.

Commissioner Pladson offered a friendly amendment to the motion that the Simulcast Auditor demonstrates compliance by August 15th. Commissioners Frederick and Secrest agreed to add the amendment. Chairman Weir asked all in favor of the amended motion to signify by saying aye. All commissioners voted aye and hearing no negative vote the motion carried.

Discussion was held requiring the Simulcast Auditor provide evidence of maintaining all supporting documentation. Discussion also included records retention of such records.

Commissioner Secrest made the motion to adopt the recommendation that the Simulcast Auditor maintain all supporting documentation. Commissioner Satran seconded the motion. Chairman Weir asked all in favor of the motion to signify by saying aye. All commissioners voted aye and hearing no negative vote the motion carried.

Commissioner Secrest made the motion to adopt the recommendation that the ND Racing Commission require monthly simulcast auditor reports be received as soon as the figures are available. Commissioner Satran seconded the motion. Chairman Weir asked all in favor of the motion to signify by saying aye. All commissioners voted aye and hearing no negative vote the motion carried.

Commissioner Secrest made the motion to adopt the recommendation that the recap report be received monthly, be prepared on a fiscal year basis, and include a column for year-to-date information. Commissioner Frederick seconded the motion. Chairman Weir asked all in favor of the motion to signify by saying aye. All commissioners voted aye and hearing no negative vote the motion carried.

Code of Ethics/Code of Business Conduct/Fraud Assessment:

Mr. Scherbenske explained that the Racing Commission, along with other state agencies, is being informed that these two new policies are to be completed before the next scheduled audit.

Commissioner Pladson made the motion to adopt the recommendation that the ND Racing Commission perform periodic fraud risk assessments and properly address significant risks that are identified. In addition, the ND Racing Commission will establish a formal Code of Ethics or a Code of Business Conduct. Commissioner Secrest seconded the motion. Chairman Weir asked all in favor of the motion to signify by saying aye. All commissioners voted aye and hearing no negative vote the motion carried.

Chairman Weir asked that these policies be placed on the agenda for a future meeting.

Noncompliance with Contract Award Requirements

The recommendation was that the ND Racing Commission complies with ND Century Code section 53-06.2-04.1 and award the contract for the breeders' administrator to the lowest responsible bidder.

Chairman Weir explained that in defense of the Racing Commission, the commission truly did try to do the right thing in awarding the contract in coordination with the Office of Management, State Procurement Office. Chairman Weir continued to explain that in the current bid that was awarded that the award for the contract for the breeders' administrator was awarded to the lowest responsible bidder.

Use of Breeders' Fund for Purse Supplements

The State Auditors were unable to determine if the ND Racing Commission was in compliance with the ND Century Code section 53-06.2-11 regarding the use of breeders' fund for purse supplements. Recommendation was for the ND Racing Commission to seek a formal Attorney General's opinion to determine if their current practice was in compliance with the state law.

As of March 30th, 2008 the Racing Commission did seek a formal Attorney General's opinion.

Chairman Weir stated for the record this Racing Commission based on advice of counsel considered the whole issue of whether it was appropriate to supplement purses with Breeders' Fund money.

Commissioner Secrest made the motion to reallocate \$125,000 from the Purse Fund to the Breeders' Fund for \$22,500 for Belcourt and \$102,500 for ND Horse Park to supplement purses.

Discussion was held on whether dollars can be transferred between the special funds. Commissioner Secrest withdrew his motion. This issue was tabled to be acted on further into the meeting.

Continuance of Declining Fund Balance

Recommendation was the ND Racing Commission implement a plan that allows for sustained future operations. This plan should not be based on any assumption of future increased revenue – either through increased pari-mutuel betting through simulcast or account wagering sites or increased gambling opportunities presented at the Horse Park.

Chairman Weir stated the Racing Commission is committed to do its very best over the next 12, 18, 24 months to preserve racing, to improve the product in Belcourt and Fargo, to make it more user friendly, to increase the crowds, to increase the on-site betting activity. We are taking the steps to increase the simulcast handle. We have a new General Manger of the track in Fargo with lots of good ideas who will be addressing us today. Racing is in peril because of the decrease in gambling. We are going to do everything we can to keep racing viable although maybe on a limited bases.

Breeders' Registry Contract

Recommendation was that the ND Racing Commission ensures they minimize the time necessary to award future contracts.

Chairman Weir thanked Kevin Scherbenske for the audit report.

5. Independent Auditor's annual audit review of 2007 Breeders' Awards

This item was heard later in the meeting. (See this item after #14.)

6. Outdoor Recreation Development Association

- 2008 Race Meet Report

Mr. DeMontigny called the Director and informed that he was unable to attend today's meeting.

Before he continued with the agenda, the Chairman asked to have a general discussion regarding the Breeders' Fund. Chairman Weir asked the Director to explain to the audience how the purses were supplemented by monies from the Breeders' and Purse Funds. Director Blaseg explained the revenue received by the Special Funds. Discussion included "what was the Legislative's Intent" during the last session. The current balances were reported for the Purse, Breeders and Promotion Funds.

Discussion was held regarding the granting of dollars from the Special Funds. It was decided to leave the \$22,500, which previously had been allocated and paid from the Breeders' Fund to Outdoor Recreation Development Association, as granted due to not having the authority to transfer funds from the Purse Fund back to the Breeders' Fund. This action was done in good faith not totally understanding what the wishes were of the Legislature.

Les Schmidt reported that the ND Horsemen's Council had addressed this issue at their last meeting on July 14th.

Chairman Weir read from the Administrative Rules regarding the Purse Fund and the Promotion Fund.

Commissioner Secrest made the motion to reallocate \$102,500 to Horse Race ND which had previously had been allocated from the Breeders Funds would now be re-allocated from the Purse Fund. Commissioner Pladson seconded the motion. The Director called for the vote. (Weir-Y, Satran-Y, Frederick-Y, Pladson-Y, Secrest-Y. The motion carried.)

The General Manager was instructed to change the condition book to reflect the purses for races receiving dollars from the Purse Fund and not the Breeders Fund.

At 1:45 p.m. the Chairman adjourned the meeting for a ten minute break. The meeting was reconvened at 1:55 p.m. The Chairman called the meeting back to order with all the commissioners present.

7. Administrative Services for the ND Bred Registry and ND Breeders' Fund
- Hiring of new contractor/vendor

The Director explained the bid was released on June 4th and opened on July 7th. The lowest responsible bidder was Management Clerical and Consulting Services LLC. The Notice of Award was issued on July 9th to all bidders and given 7 calendar days to protest the award which concluded on July 16th. After the protest period is concluded the commission may award the contract. The Director was not notified of any protests. A discussion was held regarding the first and second bid process for this contract and the issue of a conflict of interest.

Commissioner Secrest made the motion to award the Administrative Services for the ND Bred Registry and ND Breeders' Fund contract to Management Clerical and Consulting Services LLC. Commissioner Frederick seconded the motion. Chairman Weir asked all in favor of the motion to signify by saying aye. All commissioners voted aye and hearing no negative vote the motion carried.

8. State Employee Compensation Adjustments

- By legislative direction for general increase of 4% for 2nd year in 07-09 biennium.
Effective July 1, 2008

Commissioner Satran made the motion to approve the 4% increase for the two employees. Commissioner Pladson seconded the motion. Chairman Weir asked all in favor of the motion to signify by saying aye. All commissioners voted aye and hearing no negative vote the motion carried.

Chairman Weir brought up the matter of the rental space. Since the area that is rented does not have air conditioning, he asked that this item be placed on a future agenda no more than 3 months from now to discuss the matter.

9. ND Racing Commission – Budget

Director Blaseg explained the budget needs to be submitted to the Office of Management and Budget. Chairman Weir stated that not enough information was available to consider the budget and asked Commissioner Satran to work with the Director on this matter and to place the budget on the next meeting's agenda before the 8th of August.

With the permission of the commission, the Chairman stated that since there was an individual in the audience to discuss item #13, the next item to consider would be item #13.

13. Horse Race ND's variance request to remove age restriction on ND Certified Bred Horses

Richard Nevin stated his opinion was to leave the age restriction as is and not to extend the age. Director Blaseg explained the variance that was requested. He then added that the current rule does not allow any horse over the age of 6 to receive any breeders' awards. The variance request today would allow horses over the age of 6 to receive breeders' awards.

Les Schmidt, President of ND Horsemen's Council, read a statement which nullified the Horse Race ND's variance request to remove the age limit for 2008. The ND Horsemen's Council's recommendation was to not allow Horse Race ND's request.

Heather Benson, General Manager of ND Horse Park, speaking on behalf of Horse Race ND, stated that since the ND Horsemen's Council recommendation was to not allow Horse Race ND's request, would withdraw the variance request.

10. Regulator and Racing Seminar – Deadwood, SD – September 8 - 10th
- Approval of attendance and expenses

Commissioner Secrest made the motion to approve the conference expenditures for the Director to attend the Regulator and Racing Seminar in Deadwood, South Dakota. Commissioner Pladson seconded the motion. Chairman Weir asked all in favor of the motion to signify by saying aye. All commissioners voted aye and hearing no negative vote the motion carried.

11. Horse Race ND Goals and Future Plans Presentation

12. Horse Race ND's request of additional \$120,000 from the Promotion Fund

Heather Benson gave a presentation of the goals and future plans for Horse Race ND and made the request of an additional \$120,000 from the Promotion Fund.

Commissioner Secrest made the motion to allocate \$120,000 to Horse Race ND from the Promotion Fund. Commissioner Pladson seconded the motion. Chairman Weir asked all in favor of the motion to signify by saying aye. All commissioners voted aye and hearing no negative vote the motion carried.

13. This item was dealt with before item #10.

14. ND Horsemen's Council Recommendations

- Fair Circuit Horse Racing Association (FCHRA) – status of dispute (see item under #15)
- Other Issues

Les Schmidt read a report from the July 14th ND Horsemen's Council meeting where Doug DeMontigny presented to the Council, ORDA's concern of the fact that they were denied the ability for advance deposit wagering. Commissioner Frederick shared that in speaking with Mr. DeMontigny that Mr. DeMontigny will be meeting with the tribal to explain the need to work with the Governor's office to amend the compact (to allow advance deposit wagering).

5. Independent Auditor's annual audit review of 2007 Breeders' Awards

Debbie Eisenhauer gave a brief summary of her audit of the 2007 Breeders' Awards. All commissioners had previously received a shorten report of the same. The full report is available in the Commission office.

Chairman Weir asked the Director, by early fall, to work with the new contractor and with the tracks regarding a plan to process the 2008 breeders' award.

15. Proposed 2009 Legislative Issues

- Deadline for any bill drafting – December 4, 2008

This agenda item was a matter of information that the deadline for any bill drafting is December 4th. Commissioner Pladson informed Heather Benson that these months move very fast and plan to inform the ND Racing Commission in advance if any action is necessary prior to the next legislative session.

The Director informed that there was one item that did not get addressed, under **item #14**, the ND Horsemen's Council recommendation regarding the **FCHRA item**. Mr. Schmidt replied that item was not mentioned at their meeting on July 14th.

16. Service Provider Application
- Silks Corporation

To date the Commission office has not received any application from the Silks Corporation.

17. Simulcast Auditing

A lengthy discussion was held with Independent Auditor, Roger Thompson, regarding several items in the State Auditor's audit. These items included receiving reports directly from AmTote Company and completing reports in a timely manner.

The Chairman instructed the Director to meet with the State Auditors and Roger Thompson showing the process being used in obtaining reports from AmTote and to request that the State Auditors sign off on the process satisfactorily meeting their concerns. If not, find out from the State Auditors exactly what they require in terms with AmTote.

The Chairman stated that the Commission requires monthly reports. Roger explained the providers pay monthly. The tax on the July handle is due and paid in September.

18. Any other business which may PROPERLY come before the commission

19. Adjournment

A motion was made to adjourn the meeting by Commissioner Secret. Commissioner Frederick seconded the motion. All voted aye. The meeting was adjourned at 3:19 p.m.