

## **NORTH DAKOTA RACING COMMISSION**

**Live and Telephone Meeting**

**Wednesday, May 20, 2009**

**9:00 a.m. (central time)**

**Best Western Doublewood Inn, Bismarck, ND**

### **Call to Order:**

Chairman Patrick Weir called the meeting to order at 9:00 a.m. All commissioners were in attendance.

**Present:** Chairman Patrick Weir; Commissioners: DeAnn Pladson; Winston Satran; Tom Secrest and Clarence Frederick. Also present were Legal Counsel, Bill Peterson, Director of Racing, Randy Blaseg and Administrative Staff Officer Helen Tessmann.

**Others Present:** Susan Scott, Carleen Buchholz, Gail Hrdlicka, Scott Horst, David Bernsen, Heather Benson, John Bubel, Doug DeMontigny, Lee Harsche, Wayne Slater, Roger Thompson, Debbie Eisenhauer, Leigh Backhaus, Richard Nevins, Joe Cichy, Mike Cichy, Kelly Peach, Jerry Gourneau, John Ford and Leon Glasser.

## **AGENDA**

1. **Approval of Minutes – March 13, 2009 Meeting**
2. **Legislative Issues**
  - by Commissioner Winston Satran
3. **2008 Breeders Fund Awards Audit**
  - Report and Audit Billing by Debbie Eisenhauer
4. **Reimbursement for Monthly Services**
  - by Roger Thompson for monthly services for Silks Corporation
5. **2009 Live Race Season - Authority to Director**
  - a. To hire veterinarians, stewards and licensing staff
  - b. To approve Industrial Laboratories
  - c. To request tracks to submit electrical and fire safety reports
  - d. To request tracks to provide proof of insurance
  - e. To write Workers' Compensation policy for licensing staff
  - f. To write policy for licensing staff on transfers of horses' papers at track
6. **Approval of 2009 track officials and condition books**
  - a. Outdoor Recreation Development Association – Chippewa Downs
  - b. Horse Race ND – ND Horse Park
7. **Workers' Compensation Insurance Coverage Requirement**
  - To require owners and trainers, prior to licensing, to provide proof of Workers' Compensation insurance coverage for all individuals employed.
8. **2009 Harness Race Meet**
  - Horse Race ND to provide Harness Race Meet dates
9. **Belcourt Test Barn**
10. **Review New Service Providers Applications**
  - a. Megatote, LLC (account wagering)
  - b. WatchandWager.com, LLC (account wagering)

11. **Promotion Fund Request**
  - by Lisa and David O’Keeffe – Barrel Race Competition
12. **Request for discussion on loss of earnings for Major Splash Bac Jet**
  - by Melissa and Kelly Peach
13. **Proposal for Breeders’ Fund Distribution**
14. **Age Restriction on Certified ND Breds**
15. **ND Horsemen’s Council Issues or Recommendations**
16. **Jerry Gourneau’s appeal on 2008 ruling at the ND Horse Park Race Meet**
17. **Racing Commission Office Matters**
  - a. Update on writing policies required by the State Auditor’s office
    - Fraud Risk Assessment
    - Code of Ethics or a Code of Business Conduct
  - b. Consideration of staffs’ salary increase effective July 1, 2009
  - c. Scheduling of commission meeting
  - d. Management Improvement Plan – **Possible Executive Session**
18. **Any other business which may PROPERLY come before the commission**
19. **Adjournment**

## **Minutes**

### **1. Approval of Minutes – March 13, 2009 Meeting**

Previously all commissioners had received a copy of the March 13, 2009 commission meeting minutes.

**A motion was made** by Commissioner Pladson and seconded by Commissioner Satran to approve the minutes of the March 13, 2009 meeting as presented. All commissioners voted aye and hearing no negative vote the motion carried.

### **2. Legislative Issues – by Commissioner Satran**

- Regarding the bill regarding transferring the Racing Commission office to under the Attorney General’s Office, the Racing Commission took a neutral position. The Attorney General’s Office testified on this bill and the bill was defeated.
- Commissioner Satran stated that a Press Release has gone out regarding the passing of the Tax Bill of 1551 to inform entities who that might be interested in providing account wagering in North Dakota. Commissioner Satran thanked Representative Merle Boucher for his support in testifying for this bill.
- The Appropriation bill passed on the Senate side with hardly a question but when presented on the House side amendments were attached to place the Racing Commission under two jurisdictions, the Attorney General’s office and the Department of Agriculture. That was processed thorough the legislature. They voted to sustain those amendments and now the Governor has vetoed those amendments and he has made a press release. A representative of the Governor’s office said legislation was conflicting in the jurisdiction of the Racing Commission and they wanted this issue studied for the next two years to come up with a solution.

Commissioner Satran stating some people who testified during the legislation session tended to say things that I am sure they wish they had not said. He stated that Representative Rodney Froelich had stated that the commissioners are so inexperienced in the racing industry that they do not know which end of the horse to stuff hay in. At first he thought that was just a light hearted comment and then saw in the news that it got lots of laughs and then thought it is more serious than that. He thought it was the responsibility as leaders and commissioners owing it to racing industry and public that they bring some knowledge and expertise as to what they are doing. Commissioner Satran asked all the commissioners to tell about their experience with horses.

Commissioner Pladson stated she felt that that comment was directly targeted at her. She added maybe she doesn’t know which end to stuff the hay in but that she does know how to regulate and does know how to read the statutes and thought that was why the Governor appointed her.

Commissioner Secret stated he has dealt with horses all his life. He has run horses in Oklahoma, Wyoming, Montana, South Dakota and North Dakota. He currently has about 45 head that he feeds every day so he knows quite a bit about horses.

Chairman Weir stated that since he was about five years old his father had race horses. His father had a horse farm in addition to running race horses. His father bred and raced American Staddle Horses. Currently Chairman Weir has 12 or 14 horses and has had an interest in horses all his life. He added he does not have the expertise that Commissioner Secret has but felt the statement made was a bit unfair.

Commissioner Frederick states he never owned or raised horses but he has been associated with owners and been around tracks like Assiniboia Downs, Canterbury, Aberdeen, Belcourt and Fargo.

Commissioner Satran stated most of his adult life had been associated with horses. Basically ran the horse program at Dakota Boys Ranch. When while working at the Penitentiary had a cattle herd and horses and started the prison rodeo. Also had a horse program at the Home on the Range. He has owned horses and this last year sold his last horses that he had. He added that his point in all this is that he wants this on the public record and the legislative record goes into history and I want it some place showing that we do know something about horses. He asked the that a copy of the minutes be sent to Representative Froelich so that he knows we do know what end of the horse to put the hay in.

**3. 2008 Breeders Fund Awards Audit**

Copies of the audit had been presented to all commissioners. Debbie Eisenhower gave a report of the 2008 Breeders Fund Awards audit and informed the commission no errors were found. She appreciated the much improved method used since the 2007 award process and appreciated having the opportunity to serve the ND Racing Commission.

**A motion was made** by Commissioner Satran and seconded by Commissioner Secret to approve payment of \$2,495 from the Breeders Fund to Debbie Esienhauer for payment of services. All commissioners voted aye and hearing no negative vote the motion carried.

**4. Reimbursement for Monthly Services**

Director Blaseg explained that Roger Thompson is paid on a contractual bases and now since Silks Corporation has been licensed as a service provider his contract needs to be amended. Roger bills the commission, is paid by the commission, and then the service provider reimburses the commission. Roger needs to be compensated for his work on an individual bases with each service provider. An amendment is needed to his contract to provide for services for Silks Corporation.

**A motion was made** by Commissioner Secret to approve amending Roger Thompson's contract to include providing services for Silks Corporation. All commissioners voted aye and hearing no negative vote the motion carried.

**5. 2009 Live Race Season - Authority to Director**

- a. To hire veterinarians, stewards and licensing staff
- b. To approve Industrial Laboratories
- c. To request tracks to submit electrical and fire safety reports
- d. To request tracks to provide proof of insurance
- e. To write Workers' Compensation policy for licensing staff
- f. To write policy for licensing staff on transfers of horses' papers at track

**A motion was made** by Commissioner Secret and seconded by Commissioner Pladson to give authority to the Director to hire the veterinarians, stewards and licensing staff, to approve Industrial Laboratories as the test laboratory, to request tracks to submit electrical and fire safety reports, to request tracks to provide proof of insurance, to write a Workers' Compensation policy for the licensing staff and to

write a policy on transfers of horses' papers for track and licensing personal. All commissioners voted aye and hearing no negative vote the motion carried.

**6. Approval of 2009 track officials and condition books**

- a. Outdoor Recreation Development Association (ORDA) – Chippewa Downs
- b. Horse Race ND – ND Horse Park

The track official listings and condition books for ORDA had previously been provided to all commissioners.

In the ORDA condition book, a North Dakota Thoroughbred Owners and Breeders Association (ND TOBA) race required membership in order to run the race. Director Blaseg asked the question regarding the restriction of membership to run in a ND TOBA race. Lee Harsche and Leigh Backhaus spoke on behalf of ND TOBA. Leon Glasser spoke on behalf of the ND Quarter Horse Racing Association (ND QHRA).

**A motion was made** by Commissioner Secrest and seconded by Commissioner Satran to approve Outdoor Recreation Development Association's condition book and track officials as submitted. Commissioner Secrest amended the motion with Commissioner Satran amending the second to have the conditions on the ND TOBA races be handled identical as how the NDQHRA races are handled and leave the condition book as submitted with the condition place on the races not to require association membership to run the race. All commissioners voted aye and hearing no negative vote the motion carried.

Chairman Weir stated that a point has been made by Ms. Benson that the Commission has not required approval of the racing condition book in past years and she is wondering whether or not the Commission does have the authority to do so. Mr. Weir read his comments of what he sent Heather, "Any organization licensed by the commission to conduct a race meeting with pari-mutuel wagering shall provide a North Dakota-bred program and publish such conditions in the condition book prior to the commencement of the race meeting. Prior to publication and distribution of the condition book, the commission shall review and approve the North Dakota-bred racing program." (69.5-01-09-07) He continued the word shall is a mandatory word in the law that means we must do it. Heather has raised the issue why it is being done this year.

Heather Benson spoke and explained her position is not whether or not the Commission has the authority rather it has been unclear as to the procedure used and what is required.

Chairman Weir replied the regulations are going to be enforced as we don't have any choice in the matter. If the regulations are wise or not we need some input from the Horsemen's Council with changes that and provide us with reasons why the current regulations are not suited for North Dakota and give us specifics.

Commissioner Satran presented the history on approving the condition book. If there were no issues needing to be clarified the book was approved. If there were issues that came forward then it is presented to the commission. The proof of this is in the minutes of 2006, 2007 and 2008. So there is precedence of it going before the commission and to abide by the regulations. An e-mail was sent to Heather on February 12<sup>th</sup> and it said "do you have the stakes and condition book ready for the commission to review and to consider for approval at this time". "She answered they were still trying to raise money and wrote back Racing Secretary Jim Collins and herself would not be issuing the condition book until late April or early May. We are taking time to work closely with area horsemen to build a condition book based on their projections and horse availability of the 2009 season. As the condition book becomes available, I will e-mail it to your office."

Commissioner Satran continued, so that when this issue came up and the burden was put on the racing commission office that they were derelict in their duty, as I reviewed this, Randy followed the regulations, followed the history of the commission and also prompted the race tracks to get the condition books in. So maybe it is a lack of understanding but I support what the Racing Commission has done.

Director Blaseg explained that in the **Horse Race North Dakota condition book** there has got to be a distance change in the ND Thoroughbred Futurity from five furlongs to six.

The issue was raised by the Horsemen's Council wanting to have the age restriction changed for certified North Dakota bred runners. The condition book says a certified bred horse can not enter in a bred race if more than 6 years of age. A question was posed could we allow older certified ND bred race horses to run. The option for the commission to consider for approval is a certified North Dakota bred older horse as long as he does not receive any purse supplement from the Breeders' Fund, and does not receive Breeders' awards at the end of the year, can be allowed to run in a certified North Dakota bred race. Regulation 69.5-01-09-01 "Accredited North Dakota-bred race horse" was read by Chairman Weir. Director Blaseg said he posed this question with Legal Counsel specifically as to whether or not we would be within our authority in approving horses older to run in these races for only purse money and he assured that we would be.

Heather Benson reported the Horsemen's Council voted in favor of removing the age restriction. Director Blaseg stated you are not going to receive breeders' awards at the end of the year. That takes a change in the regulations. We are not saying the older horse is eligible for breeders' awards. The regulations prohibit that at this time. It is a lengthy process to change the administrative rules.

Commissioner Secrest stated it should be clear in the condition book whether or not they can race. Chairman Weir added why can't you say 3-6 year olds preferred but horses older than 6 are eligible and he stressed the only thing they are going to win is the purse.

Doug DeMontigny asked isn't there a regulation that states bred races will be considered full with 6 entries. Director Blaseg answered that is correct. Heather Benson discussed the changes she will make in writing ND Horse Park condition book.

**A motion was made** by Commissioner Secrest and seconded by Commissioner Satran to approve the ND Horse Park condition book with changes discussed and to approve the 2009 Track Officials. All commissioners voted aye and hearing no negative vote the motion carried.

Heather Benson presented some additions to the officials list with only a few positions left to fill. Chairman Weir read a message from Sam Lato, the Chief Steward, regarding the positions of Steward/Racing Secretary was to be temporary in 2007 when Jim Tilton was physically unable to finish the racing season at the ND Horse Park and it was tried again in 2008. Mr. Lato stressed the two positions should not be combined due to a conflict of interest. The position of Steward should remain separate. Director Blaseg explained this message came about as Heather has the same gentlemen working as a Steward and a Racing Secretary for 2009. Discussion continued in regards to the two positions must not be combined.

**A motion was made** by Commissioner Secrest and seconded by Commissioners Satran to approve the 2009 Track Officials and the condition book with the stipulations that have been discussed concerning changing the condition book and making a change to the Racing Secretary and Steward positions. All commissioners voted aye and hearing no negative vote the motion carried.

*A five minute break was taken. The meeting reconvened at 10:40 a.m. Legal Counsel, Bill Peterson, arrived at 10:45 a.m.*

**7. Workers' Compensation Insurance Coverage Requirement**

- To require owners and trainers, prior to licensing, to provide proof of Workers' Compensation insurance coverage for all individuals employed.

Susan Scott of Workforce Safety and Insurance agency gave a presentation on the requirements for obtaining Workers' Compensation Insurance Coverage.

**8. 2009 Harness Race Meet**

- Horse Race ND to provide Harness Race Meet dates

Heather Benson gave a report on the problems arising in scheduling the Harness Race Meet for 2009. Heather stated she would be willing to submit a budget specifically for 3 days of Harness Racing for September 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> and would probably make a request for additional funding in the \$15,000 range. Chairman Weir made the suggestion the harness racers be given three days of racing and asked Heather to provide the commission with a formal budget proposal for the harness meet at the next commission meeting.

Chairman Weir suggested establishing a Racing Commission schedule for a meeting every 6 to 8 weeks with the Horsemen's Council meeting prior to the Racing Commission's meeting. The Horsemen's Council would set their own agenda with specific issues and would making recommendations to the Racing Commission on those issues.

#### **9. Belcourt Test Barn**

Director Blaseg explained that the veterinarian who has worked the Belcourt race meet the last several years was dissatisfied with the working conditions at Belcourt. Director Blaseg handed out a copy of Dr. Jill Franks' e-mail addressing the test barn concerns.

Doug DeMontigny reported on his conversation with Dr. Frank and will continue to work with Dr. Frank but there is a limited time frame before the Belcourt meet begins. Chairman Weir asked Doug to give the commission a report on this issue after the race meet at the next commission meeting.

#### **10. Review New Service Providers Applications**

- a. Megatote, LLC (account wagering)

Megatote, LLC was represented by Mike Cichy.

**A motion was made** by Commissioner Satran and seconded by Commissioner Secret to give a conditional approval the Megatote, LLC pending all requirements being met and background checks being completed.

Commissioner Satran amended his motion and Commissioner Secret amended his seconded to give a conditional approval to consider Megatote, LLC's application once the requirements of the Racing Commission for licensing are met. All commissioners voted aye and hearing no negative vote the motion carried.

- b. WatchandWager.com, LLC (account wagering)

Director Blaseg introduced David Bernsen representing WatchandWager.com, LLC. Mr. Bernsen gave a report on the company and owners, their anticipated business, and their anticipated time frame to be up and running in North Dakota.

**A motion was made** by Commissioner Satran and seconded by Commissioner Secret to approve licensing WatchandWager.com LLC as a Service Provider subject to final completion of the background checks and approval from the Attorney General's office.

Chairman Weir moved Item #16 up in the agenda to this point.

#### **16. Jerry Gourneau's appeal on 2008 ruling at the ND Horse Park Race Meet**

Legal Counsel Bill Peterson explained the Commission today will consider Mr. Gourneau's appeal. The Commission has the authority to approve, reduce or dismiss the fine given to Mr. Gourneau. Jerry Gourneau made comments in regards to his appeal.

**A motion was made** by Commissioner Secret and seconded by Commissioner Frederick to reduce the fine to \$250.00. Satran-Y, Frederick-Y, Weir-Y, Pladson-Y, Secret-Y. Motion carried.

Legal Counsel informed that he will send the proper notice to Jerry Gourneau regarding the appeal rights and the decision.

**11. Promotion Fund Request**

- by Lisa and David O'Keeffe – Barrel Race Competition

**A motion was made** by Commissioner Secrest and seconded by Commissioner Pladson to deny granting any dollars to Lisa and David O'Keeffe for Barrel Race Competition. All commissioners voted aye and hearing no negative vote the motion carried.

**12. Request for discussion on loss of earnings for Major Splash Bac Jet**

- by Melissa and Kelly Peach

Kelly Peach presented handouts explaining his request for loss of earnings for \$18,000 and \$8,800 in breed point monies.

**A motion was made** by Commissioner Secrest and seconded by Commissioner Pladson to deny granting any dollars to Melissa and Kelly Peach for any loss of earnings and bred point awards for Major Splash Bac Jet. Satran-Y, Weir-Y, Frederick-N, Pladson-Y, Secrest-Y. The motion carried.

**13. Proposal for Breeders' Fund Distribution**

Scott Horst gave a proposal on changing the distribution of the Breeders' Fund dollars by giving 50% to the Thoroughbred and Trotters and 50% to the Quarter Horses.

Heather Benson reported that the Horsemen's Council plans to address this issue this fall after the race meet in Fargo. Commissioner Secrest requested that Roger Thompson do an analysis of wagering in North Dakota simulcast system, as to tracks and breeds.

**A motion was made** by Commissioner Secrest and seconded by Commissioner Frederick to postpone the ruling on the proposal for changing the Breeders' Fund distribution until fall after the race meets. All commissioners voted aye and hearing no negative vote the motion carried.

**14. Age Restriction on Certified ND Breds**

Heather Benson reported that the Horsemen's Council made a recommendation that the administrative rules should be changed in the age restriction on certified ND breds both for live racing and for the end of year breeders awards.

**A motion was made** by Commissioner Secrest and seconded by Commissioner Frederick to initiate a draft of a rule change dealing with the age restriction on certified ND Bred races and to also consider other administrative rule changes that maybe the commission should consider and do that by fall. All commissioners voted aye and hearing no negative vote the motion carried.

Commissioner Satran presented copies of procedures for administrative rule changes. There are fourteen pages of procedures that are to be followed. This is not an easy thing to do so don't expect miracles or speedy things to happen. Legal Counsel stated the time frame is about a five month process.

**15. ND Horsemen's Council Issues or Recommendations**

Heather Benson gave a report of the May 13, 2009 Horsemen's Council meeting.

- A volunteer group consisting of Leon Glasser, Heather Benson, Scott Horst and Leigh Backhaus has been formed to explore the Administrative Rules.
- To have Heather Benson and Dale Laderquist work with the Racing Commission to make harness racing work for 2009.
- To have the Racing Commission consider recognizing North Dakota Thoroughbred Owners and Breeders Association (ND TOBA) and to appoint a member to the ND Horsemen's Council.
- Should the ND Racing Commission set a more formal schedule of meetings the Horsemen's Council tends to meet 10 days to 2 weeks prior to each Commission meeting.

Commissioner Pladson asked Heather to forward to the Commissioners the Horsemen's Council minutes after each meeting.

Legal Counsel stated that in regards to the Horsemen's Council suggesting any rule changes that they should get them to the commission in as specific form as they can and sufficiently in advance to whomever is going to work on the proposed rule changes and then when the commission considers the rule changes in October the commission would pretty much have a completed idea as to what the proposed rules changes are.

**17. Racing Commission Office Matters**

- a. Update on writing policies required by the State Auditor's office
  - Fraud Risk Assessment
  - Code of Ethics or a Code of Business Conduct

Director Blaseg stated that he now has samples in which to work from to write these policies. Chairman Weir asked the Director to work on writing these policies and bring them up to the next meeting.

- b. Consideration of staffs' salary increase effective July 1, 2009 (this item was moved to be considered with item d).
- c. Scheduling of commission meeting (was taken care of earlier in the meeting)
- d. Management Improvement Plan – **Possible Executive Session**

Commissioner Secrest asked if it was appropriate for the commission could go into an executive session to discuss personnel issues. Legal Counsel stated it was not.

Doug DeMontigny stated he had gotten a call Jeff Jones, a jockey from Montana, wanting to get licensed in Belcourt. Director Blaseg explained the situation with Jeff Jones was with other states' rulings. Jeff Jones ruling was for race fixing. At this time an application has not come from Jeff Jones. Chairman Weir asked the Director to inform Jeff to provide an application. Commissioner Satran asked Doug to have Jeff provide additional information if he can regarding the Montana ruling.

The meeting took a lunch break at 1:00 p.m. Chairman Weir reconvened the meeting at 2:00 p.m.

During the break Leigh Backhaus mentioned to the Chairman that at the Horsemen's Council meeting a recommendation was made to add a member from the North Dakota TOBA to the Horsemen's Council. They ask the Racing Commission to recognize North Dakota Thoroughbred Owners and Breeders Association (ND TOBA) and to appoint a member to the ND Horsemen's Council and recommend Leigh Backhaus be appointed.

**A motion was made** by Chairman Weir to recognize the North Dakota Thoroughbred Owners and Breeders Association (ND TOBA) and appointed Leigh Backhaus to the Horsemen's Council to represent this group. Commissioner Pladson seconded the motion. All commissioners voted aye and hearing no negative vote the motion carried.

- d. Management Improvement Plan – **Possible Executive Session**

Chairman Weir announced the commission's intention was to have the commission focus on the operation of the Racing Commission office, focus on Director's role and the Administrative Staff Officer's role and stated the commission can not go into Executive Session to discuss personnel issues.

Chairman Weir appointed Commissioner Satran to interview the Director in his position and duties and asked Commissioner Pladson to interview the Administrative Staff Officer in her position and duties. These Commissioners are then to report back to the full commission of their findings.

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

There was none.

**19. Adjournment**

Commissioner Satran made the motion to adjourn the meeting. Commissioner Frederick seconded the motion. The meeting was adjourned at 2:19 p.m.