

**NORTH DAKOTA RACING COMMISSION**  
**Live and Telephone Meeting**  
**Bismarck Public Library, 515 N 5<sup>th</sup> Street, Room C, Bismarck, ND**  
**Tuesday, September 28, 2010 – 11:00 a.m. (central time)**

**Call to Order:** Chairman Jim Ozbun called the meeting to order at 11:06 a.m.

**Present:** Chairman Jim Ozbun, Commissioner Clarence Frederick Sr. and Commissioner Andrew Maragos. Also present were Legal Counsel, Bill Peterson, Director of Racing, Winston E. Satran and Administrative Staff Officer, Helen Tessmann.

**Present by phone:** Commissioner Tom Senftner (later joined the meeting in person).

**Others present:** Roger V. Thompson, Debbie Eisenhauer, Tom Disselhorst, Robert Monette, Scott A. Horst, Lorraine Lavendere, Marty M. Davis, Leon A. Glasser, L.J. Harsche, Ted Henry, Betty Swain, Vince McCloud, Chuck DeCoteau, Jim Baker, Mike Cichy, Wayne Slater, Shelly Slater, Ron Klein, John Ford, David Bernsen and Gail Hrdlicka.

**AGENDA**

1. **Approval of Minutes – June 8, 2010 meeting**
2. **Audit Report of 2009 Breeders' Fund Awards**
3. **Audit Report of 2010 Chippewa Downs Race Meet**
4. **Outdoor Recreation Development Association's 2010 Race Meet Report**  
- Live Meet at Chippewa Downs, Belcourt, ND
5. **Kelly Peach – Chippewa Downs Racing Issue**
6. **Horse Race ND Update Report**
7. **Breeders' Fund 2010 Distribution of Awards**
  - a. Approval of Payment for the 2010 Breeders' Fund Awards
  - b. Consideration of Double and Triple Point Awards
8. **Review and Approval of NDRC's 2011-13 Budget**
  - a. Approval of ARCI 2011 Membership Dues
  - b. By legislative direction, Staff's July 1<sup>st</sup> Compensation Adjustment
9. **Director's Reports and Requests**
  - a. Report on 2010 Chippewa Downs Race Meet
  - b. Report on Emergency Commission's Action
  - c. Update on Proposed Rule Changes
  - d. Approval to attend the 2010 Symposium on Racing - Tucson, Arizona
  - e. Proposed 2010 Legislative Issues
    - Breakage Legislation
    - Legislative Approval of Promotion Fund Expenditures
  - f. 2010 Pete Davis Racing Issue
  - g. 2009 Rick Tessin/Rick Buchholz Breeders' Fund Issue
  - h. 2011 Account Wagering Projected Revenues

10. **Promotion Fund Request**
  - Personalized Management Services amended application for \$238.60 expense for the 2010 Annual Horsemen's Banquet
11. **Turtle Mountain Band of Chippewa Indians**
  - Amending current license to include account wagering
12. **Service Provider's Application**
  - Source One Technologies
13. **ND Horsemen's Advisory Council's Issues/Recommendations**
14. **Adjournment**

## **MINUTES**

*Director Satran announced to the Commission that changes had been made to the Agenda. Prior to the meeting **Item #5** has been settled and **Item #12** will be postponed until the next meeting.*

**A motion was made** by Commissioner Maragos and seconded by Commissioner Frederick to accept the agenda item changes. Roll call was taken: Ozburn-Y, Frederick-Y, Maragos-Y and Senftner-Y. Motion Passed.

### **1. Approval of Minutes – June 8, 2010 meeting**

Previously all commissioners had received a copy of the June 8, 2010 commission meeting minutes.

**A motion was made** by Commissioner Maragos and seconded by Commissioner Frederick to accept the minutes of the June 8, 2010 meeting as presented. All Commissioners voted aye and hearing no negative vote the motion passed.

### **2. Audit Report of 2009 Breeders' Fund Awards**

The 2009 audit was prepared and submitted to the ND Racing Commission by Debbie J. Eisenhauer, CPA. Ms. Eisenhauer reported that the ND Breeder's Fund Awards were calculated, allocated and disbursed correctly for the 2009 racing season held at Chippewa Downs, Belcourt ND. Two Breeder's Fund Award checks were held; 1) Rick Tessin \$391.87, due to an unpaid Settlement Agreement; 2) Andy Stronach \$27.87, due to paperwork needed completion to issue a state check. The total amount withheld is \$419.74. When these checks are issued the total Breeder Fund disbursements will total \$85,863.95.

**A motion was made** by Commissioner Frederick and seconded by Commissioner Maragos to accept the 2009 ND Breeders' Fund Awards Audit as presented. All Commissioners voted aye and hearing no negative vote the motion passed.

Director Satran reported that the current Breeder's Fund balance is \$684,730.53.

### **3. Outdoor Recreation Development Association's 2010 Race Meet Report**

- Live Meet at Chippewa Downs, Belcourt, ND

Wayne Slater from the ORDA Board reported that the new ORDA Board Chairman is Marty Davis. (Note: A financial report had not been received prior to the commission meeting therefore the ORDA report will be presented at a future meeting.)

### **4. Audit Report of 2010 Chippewa Downs Race Meet**

The audit for Outdoor Recreation Development Association's (ORDA) 2010 Race Meet held at Chippewa Downs, Belcourt, ND was prepared and submitted to the ND Racing Commission by Thompson's Financial Services. Mr. Thompson read the report to the Commissioners advising them that ORDA owes the ND Racing Commission for funds and breakage in the amount of \$1,628.34. Mr. Thompson also provided a two year comparison showing the percentage increase from the 2009 race meet.

**A motion was made** by Commissioner Maragos and seconded by Commissioner Senftner to accept the 2010 ORDA Audit report for the 2010 Race Meet as presented. All Commissioners voted aye and hearing no negative vote the motion passed.

**New Commissioner:**

Chairman Ozbun announced that Mr. Steve Hartman, a rancher from the western part of the state, is the newly appointed Commissioner and he will be joining the ND Racing Commission at the next meeting.

5. **Kelly Peach – Chippewa Downs Racing Issue** Issue settled.

6. **Horse Race ND Update Report**

Mike Cichy, Horse Race ND (HRND) President, reported to the Commission on the current financial status of the Horse Race North Dakota in Fargo. A report of payments made and amounts remaining were provided to the Commission which showed to date the balance owed by HRND. Mr. Cichy stated that in January 2011, Horse Race North Dakota will begin payments on their loan of \$100,000.

7. **Breeders' Fund 2010 Distribution of Awards**

a. Approval of Payment for the 2010 Breeders' Fund Awards

Director Satran reported that a motion is required to approve the Breeder's Fund payments for 2010 awards based on 12.5% of the breeder's fund balance as of October 1, 2010 and awards will be issued by December 31, 2010.

**A motion was made** by Commissioner Maragos and seconded by Commissioner Frederick to approve payment of the 2010 Breeders' Awards based on 12.5% of the breeder's fund balance as of October 1, 2010 from the Breeders' Fund. Roll call was taken: Maragos-Y, Frederick-Y, Ozbun-Y and Senftner-Y. Motion Passed.

b. Consideration of Double and Triple Point Awards

Director Satran reported that since there were no purses in the amount of \$10,000 or more, there was no need to consider double or triple point awards for the 2010 ORDA race season.

8. **Review and Approval of NDRC's 2011-13 Budget**

Director Satran presented the 2011-2013 ND Racing Commission's budget at \$431,041.

**A motion was made** by Commissioner Frederick and seconded by Commissioner Senftner to approve the ND Racing Commission's 2011-13 Budget as presented. Roll call was taken: Frederick-Y, Senftner-Y, Maragos-Y and Ozbun-Y. Motion Passed.

a. Approval of ARCI 2011 Membership Dues

Director Satran reported on the importance of maintaining membership in the Association of Racing Commissioners International (ARCI). ARCI provides technical and professional resources.

**A motion was made** by Commissioner Maragos and seconded by Commissioner Frederick to approve payment of the 2011 membership dues to the Association of Racing Commissioners International. Roll call was taken: Frederick-Y, Maragos-Y, Ozbun-Y and Senftner-Y. Motion Passed.

b. By legislative direction, Staff's July 1<sup>st</sup> Compensation Adjustment

Director Satran reported that the 61<sup>st</sup> Legislative Session, January 2009, passed House Bill 1015 which provided a 5% increase for state employees the second year of the biennium. Director Satran recommended the Commission appropriate this increase to Helen Tessmann, the ND Racing Commission Administrative Staff Officer and make the increase retroactive to July 1, 2010.

**A motion was made** by Commissioner Frederick and seconded by Commissioner Maragos to approve the 5% state employee salary increase, retroactive to July 1, 2010, to Helen Tessmann the NDRC Administrative Staff Officer. Roll call was taken: Frederick-Y, Maragos-Y, Ozbun-Y and Senftner-Y. Motion Passed.

**9. Director's Reports and Requests**

a. Report on 2010 Chippewa Downs Race Meet

Director Satran reported on several improvements that were made at the Belcourt race track this year. Director Satran has recommended to the ORDA Board that they consider having their members attend racing secretary and steward schools. The ORDA board continues to make improvements and has a plan in place for future facility improvements.

b. Report on Emergency Commission's Action

Director Satran reported that the ND Racing Commission had requested that the State Emergency Commission remove the \$30,000 cap from the Administrative Fund and allows the NDRC to spend an additional \$75,000 so that the NDRC office has funding for continued operations.

c. Update on Proposed Rule Changes

Director Satran updated the Commissioners and the audience on the current status of the Administrative Rule changes. Director Satran thanked Legal Counsel, Bill Peterson for his assistance in this process.

The preliminary documents, procedures and proposed rule changes have been prepared and submitted to the necessary entities. There was a public hearing held on September 22, 2010. The written records will be open until October 11, 2010. Once the written records are closed the ND Racing Commission will draft a list of responses and submit them to the commissioners for their review and comments. The Commission will meet to discuss each comment submitted by the public. Then a request will be submitted to the Attorney General's office for his opinion on the legality of the rules. The rules are filed with the Legislative Council and then will be presented to the Administrative Rules Committee.

d. Approval to attend the 2010 Symposium on Racing - Tucson, Arizona

Director Satran reported that other states are in competition with North Dakota in licensing Account Wagering companies. Mr. David Bernsen, Global Wagering Group LLC., has recommended that Director Satran attend the 2010 Symposium in Arizona in December. Director Satran will be introduced to national and international leaders which will give North Dakota presence in the industry and also will improve ND's credibility among other states.

**A motion was made** by Commissioner Maragos and seconded by Commissioner Frederick to approve Director Satran's attendance at the 2010 Symposium on Racing in Tucson, Arizona and to be funded out of the Administrative Fund. Roll call was taken: Maragos-Y, Frederick-Y and Ozbun-Y.

(Commissioner Senftner's phone connection was dropped.)

e. Proposed ~~2010~~ 2011 Legislative Issues

- Breakage Legislation
- Legislative Approval of Promotion Fund Expenditures

Director Satran reported on the estimated dollar amounts that would be coming into North Dakota from the current licensed account wagering companies. Two more account wagering companies from Las Vegas have submitted license applications to do business in North Dakota.

Director Satran requested the commission's approval for \$25,000 or 25%, whichever is greater, to be appropriated each year from the Promotion Fund to pay for administrative operations for the accountant expenditures. As more account wagering companies become licensed in North Dakota there will be more

expenses incurred with operation and auditing. When the Commission approves this request a Bill will be drafted and presented to the 2011 legislative session.

**A motion was made** by Commissioner Maragos and seconded by Commissioner Frederick to approve \$25,000 or 25%, whichever is greater, to be appropriated each year from the Promotion Fund to pay for administrative operations for accounting expenditures. Roll call was taken: Maragos-Y, Frederick-Y and Ozbun-Y. Motion Passed.

Discussion: John Ford of Lien Games asked the Commission to consider other initiatives that might be considered for the upcoming legislative session. For example, exchange wagering, as well as other ways in the racing industry that might be advantages to North Dakota.

*(12:40 PM Commissioner Senftner arrived at the meeting.)*

f. 2010 Pete Davis Racing Issue

Wayne Slater, ORDA Board, provided the Commissioner's with a copy of the Complaint that was filed against the ORDA race track by Pete Davis. Mr. Slater explained that Mr. Davis had registered two horses for the same race so the ORDA Board and Mr. Davis reached an agreement on the day of the race, July 4, 2010 that Mr. Davis would remove one horse and he could chose. After the race, Mr. Davis submitted the complaint to the State Steward requesting 50% of the purse money for the horse that was excluded from the race.

Legal Counsel, Bill Peterson, explained the NDRC does not have jurisdiction in this matter. Wayne Slater explained the ORDA Board wanted the Commission to be aware of the issue and that the ORDA Board is not changing their decision.

g. 2009 Rick Tessin/Rick Buchholz Breeders' Fund Issue

Legal Counsel Bill Peterson explained that at the 2004 race meet in Fargo, Mr. Rick Tessin violated the ND Racing Commission rules by entering a horse in the race when he was also licensed as an Association Steward for Horse Race ND. Mr. Tessin transferred ownership of Skis Easy Dash to Rick Buchholz so he could race the horse. A Settlement Agreement was issued between NDRC and Mr. Tessin. To date, Mr. Tessin had not fulfilled the Agreement.

In 2004, Purse money and Breeder's Fund awards were paid to Mr. Rick Buchholz as the owner of Skis Easy Dash at the time of the race.

On June 18, 2010 a 'Statement of Fact' was sent to Mr. Rick Buchholz and Mr. Rick Tessin for their explanation of what was done with the money won by Skis Easy Dash. Mr. Buchholz responded on July 6, 2010 stating in writing, signed and notarized that he gave Mr. Rick Tessin cash at a Horse Race North Dakota meeting. On July 8, 2010, Mr. Tessin responded in writing, signed and notarized that he did not receive any money for the races run by Skis Easy Dash.

Currently, the NDRC has held Mr. Tessin's 2009 award money for the Commission to decide if they want to pursue further disciplinary action.

**A motion was made** by Commissioner Maragos and seconded by Commissioner Senftner to authorize Legal Counsel Bill Petersen to send a letter to Mr. Rick Tessin advising him that he is in violation of the signed Agreement wherein he agreed to pay back the purse and breeders fund money awarded to Skis Easy Dash in 2004. And further move that the North Dakota Racing Commission withhold any future Breeder's Fund Awards payable to Mr. Tessin until the amount of \$1806.18 is paid. Roll call was taken: Maragos Y, Senftner Y, Frederick Y and Ozbun Y. Motion Passed.

h. 2011 Account Wagering Projected Revenues

Director Satran presented projected future revenues from licensed account wagering companies in North Dakota.

**10. Promotion Fund Request**

- Personalized Management Services amended application for \$238.60 expense for the 2010 Annual Horsemen's Banquet

The \$238.60 is an amended application from Personalized Management Services to replace the previous submitted application requesting \$2500 for expenses incurred at the 2010 Annual Horsemen's Banquet. At the time of the receipt of the original application, NDRC requested an itemized statement for those expenses, but received an amended application. No money from the Promotion Fund has been paid out for the original application.

Scott Horst informed the Commission that additional proceeds came in at the Horsemen's Banquet to offset expense therefore the amended amount to the application.

**A motion was made** by Commissioner Maragos and seconded by Commissioner Frederick to pay Personalized Management Services \$238.60 out of the Promotion Fund for expenses incurred at the 2010 Annual Horsemen's Banquet. Roll call was taken: Maragos-Y, Frederick-Y, Senftner-Y, and Ozbun-Y. Motion Passed.

**11. Turtle Mountain Band of Chippewa Indians**

- Amending current license to include account wagering

Tom Disselhorst, attorney for the Turtle Mountain Band of Chippewa Indians (TMBC), asked the Commission to re-examine a 2007 memo from Assistant Attorney General Bill Peterson that states it is impermissible for the TMBC to conduct "account wagering" from their simulcast racing site on the Turtle Mountain Indian Reservation. Mr. Disselhorst states that "account wagering" is permissible under the Tribal-State Gaming Compact between TMBC and the State of North Dakota. Mr. Disselhorst further made reference to a letter that was submitted to Director Satran July 9, 2010 from Mr. Richard J. Marcellais, Tribal Chairman, and refers to the Compact and amendments in regard to allowing "account wagering". Also Chairman Marcellais sent a letter dated July 29, 2010 requesting the current North Dakota simulcast license for Sky Dancer Hotel and Casino be amended to include "account wagering".

**A motion was made** by Commissioner Frederick and seconded by Commissioner Senftner to authorize Director Satran to request an Attorney General's opinion in the matter of allowing the Turtle Mountain Band of Chippewa to conduct "account wagering". Roll call was taken: Frederick-Y, Senftner-Y, Maragos-Y and Ozbun-Y. Motion Passed.

**12. ~~Service Provider's Application~~** — Postponed until the next meeting.  
—Source One Technologies

**13. ND Horsemen's Advisory Council's Issues/Recommendations**

Since there has not been a meeting, no report given.

**14. Adjournment**

**A motion was made** by Commissioner Maragos and seconded by Commissioner Frederick to adjourn the meeting at 1:50 pm.