

MONTANA BOARD OF HORSE RACING
BOARD MEETING
10 A.M., October 12, 2009
COLONIAL INN RED LION
Helena, MT

APPROVED MINUTES

ATTENDANCE:

Al Carruthers	Chairman	Mike Tatsey	Board Member
Susan Egbert	Board Member	John Ostlund(phone)	Board Member
Sue Austin	Board Member	Topper Tracy	Board Member
Ryan Sherman	Executive Secretary	Sherry Meador	Legal Counsel

PUBLIC IN ATTENDANCE: Ben Carlson, Lou Wojciechowski, Jim Espy, Don Richards, Merritt Pride, Randy Rasmussen, Val Crossland, Ray Norgaard .

CALLED TO ORDER: Chairman Carruthers called the meeting to order at 10:00 am

MINUTES: Member Austin moved to approve September 12th minutes. Member Egbert seconded the motion. Motion passed

NEW BUSINESS:

- A. Live Race Meet Wrap-Up -- Ryan reviewed spreadsheets of each race meet. With 16 days of live racing in the State, we handled over 1 million dollars with an average daily handle of over \$62K. Average purse was \$3000. Averaged 9.6 races per day. Ryan broke the numbers down by race meet. Total for both breeders and owners bonuses was over \$82K. Heritage Stable was the top owner/breeder. Two Montana Bred races in Billings – hadn't happened in several years.
- B. Simulcast Update – Montana OTB -- \$2.6 Million handled. Still at 8 sights. One move in Butte from one site to another and proposed sites in Bozeman and Butte.
- C. ADW -- \$176K in handle. New ADW site added (Day at the Track). \$31K going back to tracks, BHR \$3900, Owners/Breeders \$1900

MONTANA LOTTERY FANTASY RECRUITMENT and UPDATE: Ryan updated the Board on FS efforts by the Lottery. The Lottery has put in \$300K in advertising which will go through the football season – mostly in television, live radio feeds at the local football games, banner ads at College football games, print ads in Eastern Montana, and web sites. Point of sales places, they have table tents, window screens, how to play brochures, and promotional items. Lottery is asking horsemen to ask for the fantasy sports games at local bars, and to forward to Ryan any manager names. Now at 215 sites. Chairman Carruthers emphasized that they needed more sites to make more money. He asked Lottery why Delaware was making so much more money and it's because they're

doing actual sports betting. Montana is limited to the Fantasy Sports game described in statute. Chairman Carruthers said it is growing but we need more and need the help of horsemen to get more sites open. sports betting is not an option.

Member Austin commented on the banners that say “Play Montana Sports Action” and wondered if anyone knew what that meant. She said it should say “Play Fantasy Football or NASCAR” instead. There was further discussion about the need to be more specific in their advertising. A comment was made that the Banners on sites in Helena specifically stated “Fantasy Football”.

LEGISLATIVE AUDIT CONCLUSION: Sherry reported that she, Ryan, Al Carruthers and Susie Egbert attended the Legislative Audit Committee meeting on behalf of the MBHR. The Legislative Auditors believed fantasy sports was actually a sports pool and Lottery was prohibited by statute to offer sports pools. Sherry pointed out to the committee that FS is specifically not a sports pool because it is not a bet on the outcome of the game and the AG’s office stated the same in its letter to the NCAA. The legislative auditor said the AG’s letter was just a comment and that we needed an official AG’s opinion on the issue. The legislative audit was also concerned with that the interagency agreement between MBHR and the Lottery bypassed the Montana Procurement Act (MPA) as it required an RFP before any contracts are granted. We stated that the MPA specifically exempts contracts for services between the government and its political subdivisions from the RFP process. Accordingly, MBHR did in fact follow the MPA. The audit also said that the network provider was actually a license rather than a contract and MBHR couldn’t agree to grant a license for longer than a year. Lottery agreed to revise the agreement and limit it to a year-to-year basis. There was also discussion of the Lottery’s control over the Fantasy Sports Coordinator (who is Ryan) to which the role of the FSC will be clarified in the agreement. There was also a discussion of whether or not MBHR could defer licensing of FS facilities to the Lottery. This was more of a practical matter because the Lottery was already licensing the facilities, MBHR didn’t have any resources at the time to do the licensing, and it was a common practice among agencies (i.e. DOJ and DOR) to share resources where there were no conflicts involved. Sherry reported that the Tavern Association Lobbyist was there and spoke very well in support of MBHR and Lottery’s game. He provided the Audit Committee a lot of history was influenced how this audit came about.

The Audit Committee clarified that in its motion to accept the audit report, it did not mean that it approved of the audit’s recommendation. Senator Cooney specifically said that he did not agree with the audit’s recommendation to stop the game and that it seemed to be a matter of poorly defined legislation. Senator Taylor Brown approached us after the meeting and said he would be willing to carry any legislation that we needed in the next session. Senator Mitch Tropilia also approached us afterwards and said he appreciated our response and would help us out in the next legislative session. MBHR will present at the November 17th Legislative Audit Committee what changes were made. The Economic Affairs Committee requested a presentation of the audit and our response at their next meeting which is prior to the LAC meeting. It was determined though that it was inappropriate for the EAC to require a response prior to the LAC’s meeting and so

that response is postponed until the EAC's January meeting. It was noted that a member of the EAC was fervently anti-gambling and could be the reason EAC won't let it go.

MIDLAND HORSE RACING ASSOCIATION: Ryan reported that there was an application submitted for simulcast race dates from the Midland Horse Racing Association (MHRA). Ben Carlson spoke to the Board and wanted to explain where they were coming from as a result of the discussion at the September Board meeting in Billings. He presented to the Board an 8 yr recap of the statewide simulcast handle for MSP and how much of that MSP distributed to the tracks. He compared the prior return to what MOTB/ME is putting back into racing. MSP returned 3.6% of handle back to racing, 3.1% (purse or other purpose) that comes back through the Board, along with the 1% that's sent through the Board for administration for a total of 7.7%. MOTB/ME returned the same money to the State (3.1% pop and 1% admin) but weren't bound by MSP bylaws to distribute anything else to the tracks. Second page is March 24th to October 24th total handle report for 2009 and a comparison of the same time period in 2008. Ben noted that some sites were up and some sites were down but that the total handle was down 21.8% (\$2,610,899 in 2009 to \$3,336,636 in 2008). Ryan noted that a chart of the same figures had been emailed to the office.

Chairman Carruthers stated that MOTB/ME had been notified of this meeting and been asked to come but chose not to. Chairman Carruthers commented that he was disappointed in ME's promises that were not fulfilled. He stressed the need for simulcast to improve because live horseracing was dependent on it. Ben noted on page three of his packets that Yellowstone Downs incurred a significantly higher loss in the triple crown races than the statewide sites incurred, thus refuting ME's claims that losses were a result of the poor economy. Ben reported on Yellowstone Downs' attendance and handle for 2008 (2,609 and \$66,108 daily average) and 2009 (3,933 and \$78,515 daily average). It was noted that there was a significant increase in attendance and handle despite the poor economy.

Member Austin asked if MHRA's application was for the statewide simulcast license. It was noted that it was. Ben explained to the Board that MHRA was purposefully not MSP because they thought it was more beneficial to be a track based organization rather than a casino based organization so they could get better rates from the major tracks. MHRA is a non-profit organized in 1989 formed for the promotion and support of racing on the flat. Ben stated that, upon being approved for a Simulcast Network License, a simulcast committee or board of directors will be formed consisting of area representatives, being either horsemen or track management, from western, central, eastern and southern Montana which will also act as a liaison to respective simulcast outlets in their area. There will also be an HBPA, MT BOHR and MHRA advisory Representative as well as legal counsel, an accounting firm and simulcast operations firm. There may very well be representatives from other regional states also considered. Chairman Carruthers asked if this would basically be the same people involved as was MSP. Ben stated that there will be some of the same people involved but that it was not the same organization. Ben further stated that MHRA would not be profit sharing with other states – each state would get its own handle percentage – but that they would

benefit from the volume of all the states working together to have greater bargaining power to get a better rate from the bigger tracks' signal fees. Member Tracy asked if MHRA has attempted to already join with other states yet. Ben stated that they have investigated it quite thoroughly. There was discussion as to when MHRA proposed to start simulcasting. It was clarified that ME was granted a licensing for all simulcast races in all counties in Montana through 12/21/09. The Board could not just cancel that license without cause. There is no right, however, to a license renewal and competing applicants would need to follow MBHR's rules providing that the Montana Administrative Procedures Act (MAPA) applies. Under MAPA, the issue comes before a hearing officer and then to the Board unless all parties waive the proceedings and the issue goes directly to the Board.

Chairman Carruthers asked MHRA was planning on uplinking any local races. Ben stated that he did not believe it would be economically feasible to do so.

There was further discussion as to what dates MHRA would be applying for, and when the hearing process would start. It was noted that the hearing process would not begin until two conflicting applications were submitted. Ryan reported that ME was to submit an application by November 1st. Chairman Carruthers stated that the process last spring was driven by the Board's desire to have Great Falls run and that ME's simulcast license was submit to them running a live race meet. He further stated that he didn't know what their plans were with Great Falls and that he was frustrated by them not choosing to attend this meeting.

Ryan informed the Board that he received a letter this last Tuesday from Montana HBPA addressed to the Board and endorsed by the National HBPA and was asked to read it at this meeting. The letter is included in the Board packet. The letter advised the Board that MT HBPA has tried unsuccessfully to negotiate with the Spector Group toward reaching a common ground for racing at Great Falls. MT HBPA seeks the Board's assistance to encourage the parties to reach an agreement and to agree upon terms not just for racing days but also purse contributions, backside improvements, etc. The letter further stated that the Interstate Horseracing Act of 1978 (IHA) envisions that horsemen's associations reach agreements with racetracks concerning the conduct of racing. Simulcasting was never intended to displace wagering on live racing. MT HBPA sincerely hoped that the Spector Group will sit down and negotiate in good faith with horsemen to reach an agreement with MT HBPA for the conduct of live racing. The letter then stated that if an agreement is not reached, MT HBPA respectfully objects to the Board's approving of any importation of simulcasts for off-track wagering purposes pursuant to the terms of the IHA. The IHA gives this body full oversight and approval authority for any simulcasts being sent into Montana. MT HBPA does not feel that the Spector Group should be allowed to import simulcast signals for off-track wagering purposes if it is not going to sit down and negotiate in good faith with horsemen as to a fair and appropriate split of revenues to be given to horsemen in purses and agree to an appropriate number of racing days, etc.

Jim Espy asked the Board if given the fact that Yellowstone Downs has lost 40% of its simulcast revenue through MOTB/ME's operation, could a simulcast license be granted to MHRA just for Billings in time for the Breeder's Cup which brings in a significant amount of revenue for the year and hopefully add race dates for next year. It was clarified that ME was given the exclusive right to every race date in Montana until December 31st, 2009. If the Board grants another license to MHRA, it is effectively denying ME the opportunity to run races at that time at that place where they already had a license to do so. It was stated in the final order.

There was further discussion as to the Board's grant of a license to ME. It was not because the Board was in any way against MSP but because they had been told by MSP that it was at a point of closing and the board was desperate to keep simulcast alive because live racing was so reliant on it. At the time, ME convinced the Board that it had the resources and the ability to make it work. Member Egbert emphasized to the group that the Board is working very hard and is looking out for everyone – the big picture. She stressed that we need to realize we are in this together, and all we want is for racing to survive.

Member Ostlund moved that the Board accept MHRA's application and that the Board's attorney set up the necessary hearings to review any competing applicants. Member Egbert seconded the motion. Motion passed.

There was a comment by the audience that when ME presented its simulcast application, they came across as the savior and was very convincing. It was further noted that they had a good financial statement and the vote of the audience at the hearing was clearly in ME's favor. Member Ostlund moved that the Board accept MHRA's application and that the Board's attorney set up the necessary hearings to review any competing applicants. Member Egbert seconded the motion. Motion passed.

2010 DISCUSSION: Chairman Carruthers said he was disappointed that no one was there from Great Falls. He said that Dale Mahlum had told him there was a meeting in Missoula on what they were going to do with the track. Member Tracy informed the Board that the meeting involved three options -- keeping the track there, moving the track and fairgrounds, or get rid of the track and keeping the fairgrounds there. Dale Mahlum and Cliff Larsen have met with the County Commissioners who told them they wanted to see races there but they didn't want to put out any money. Member Tracy provided to the Board an estimate of the money he thought would be available to the race tracks by May 2010. Taking simulcast percentage, fantasy sports, account deposit wagering, licensing (Ryan will provide the exact numbers), we have approximately \$1 million to distribute back to the track. Member Tracy proposes that each track gets a certain amount of money for the days run and a certain amount of money for the days the track is kept open. The track then puts however much money they get into the race meet and doesn't keep asking the Board for more. Ideally, the tracks would know by the first of December how much money they'd be able to get – it's very transparent -- and you only get the money for the days you run. It would help everyone to know upfront how much money is there

and what each track gets. Then, the tracks supplement it with sales, admissions, food and beverage, and sponsorships. More advertisement and promotion is needed.

Chairman Carruthers said there was a problem with a lack of dates between Miles City in May and Great Falls in July. Need to fill that space or we're going to keep losing horses. He's disappointed with a lack of attendance at board meetings by representatives of Great Falls and Missoula. There was a public comment about working with North Dakota to coordinate dates with Montana. Ryan reported that there is a meeting in Idaho to look at forming a circuit between Idaho, North Dakota, and Montana. Member Egbert asked Ben Carlson about the relationship between Yellowstone Downs and the County. Ben stated that he starts at the back end and works up to what dates they can run. They are working on a multi-year contract with the county which will help out YD's planning and there should be no problem with spring training days in the future because that is part of the contract. Ben is worried that they will not know what money they have in time to commit to a number of race days by November 1st.

Chairman Carruthers noted that we need to get dates set early so that we have horsemen for futurities and stakes races. Dates need to be advertised. Jim Espy said it was difficult to set dates when the track budget is so tight.

There was a discussion on the need for an economic impact statement to show the counties the financial impact of racing on the community. Ryan informed the Board that University of Arizona can create a very good economic impact statement specific to Montana. Ryan and Chairman Carruthers commented on the Great Falls Commission's lack of communication. Member Tatsey moved that the Board meet at Great Falls and Missoula and advertise locally that we're there so that the community knows the Board is active. Member Austin seconded. Motion passed.

A representative from Great Falls reported that Dick Forester wanted the Board to know he was putting together a proposal to the Great Falls Commission to run the Great Falls race meet. He was unable to attend the Board meeting because of a death in the family. Chairman Carruthers responded that he needs to submit an application for dates pending discussions with the County Commissioners.

There was discussion about coordinating race dates with Alberta, attracting horses from other states, should there be more dates for lower purses. Member Tatsey asked about the consequences of tracks applying for dates and not being able to run them. It was noted that the rules provide that the Board can fine \$500 for each date dropped but that the fine is not mandatory. Member Tatsey said that the board needs to promote submission of race date applications even if they can't guarantee them so that they don't lose the opportunity to run if the track comes up with money at a later date. The Board agreed with Tatsey.

OTHER BUSINESS: The Board discussed the need for the racing community to collaborate with other horse associations to see how they can help each other. Member Tatsey moved to create a subcommittee of the Board to develop working relationships with other horse groups. Member Egbert seconded. Motion passed. Members Tatsey and Egbert will coordinate the committee.

Member Tracy discussed the need for an easy to find web site to centralize all of the sites providing information about racing in Montana and to provide regular updates on Board activities. Ryan said that he would be able to develop such a website. The Board agreed that it would be useful for horsemen, track management, and the public alike.

PUBLIC COMMENT: Chairman Carruthers opened the floor for additional public comment. No further comments were made.

ADJOURNMENT: Member Austin moved that the meeting be adjourned. Member Egbert seconded. Motion passed.

The meeting was adjourned at 1:15p.m.

Signature

Date