

**NEW MEXICO HORSE RACING COMMISSION
MINUTES OF THE SPECIAL MEETING**

Date: January 5, 2023, at 9:00 a.m.

Place: NMRC Boardroom; 4900 Alameda Blvd., NE, Albuquerque, NM and Zoom Video Conference – Meeting ID: 818 8056 1116

Members Present: Vice-Chairman David “Hossie” Sanchez, Commissioner John Buffington, Commissioner Billy Smith, and Commissioner Margaret Branch

NMRC Staff Participating: Executive Director Ismael Trejo, In-House Counsel Richard Bustamante and Law Clerk Denise Chavez.

Also Present: Assistant Attorney General Christopher Moander (via Zoom).

<i>AGENDA ITEM</i>	<i>RECORDING #</i>	<i>DISCUSSIONS/CONCLUSIONS/ RECOMMENDATIONS</i>	<i>ACTION TAKEN</i>
Public Session 1: 1. Call to Order and Roll Call	00:03 – 00:15	Meeting called to order at 9:00 a.m. by Vice-Chairman Sanchez. Roll call was taken by Denise Chavez. Executive Director Ismael Trejo, In-House Counsel Richard Bustamante, Assistant Attorney General, Christopher Moander and NMRC Law Clerk, Denise Chavez were also present.	No Action Taken.
2. Pledge of Allegiance	00:20 – 00:45		Pledge of Allegiance was recited.
3. Opening Comments by the Chairman & Commissioners	00:53 – 00:10:28	Sam Bregman informed the NMRC and everyone present at the meeting he has been appointed as the Bernalillo County District Attorney and, therefore, will no longer be with the NMRC. He thanked all staff of the NMRC and the Commissioners for all	No Action Taken.

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<p>4. Litigation Updates</p>	<p>0:10:32 – 0:16:43</p>	<p>their hard work. He wished all good luck and left prior to the commencement of the meeting.</p> <p>Vice-Chairman Sanchez reminded everyone in order to have a productive meeting today, all should “take off their blinders.” We need to try to see other people’s points of view and work together to come up with solutions.</p> <p>Commissioner Smith reminded everyone the NMRC is not the adversary. It has no authority over the breeding industry. It may suggest ideas, but the Commission cannot mandate the breeders to do anything.</p> <p>Commissioner Buffington said he is looking forward to this discussion. He advised all in attendance he has “taken off his blinders.”</p> <p>Commissioner Branch thanked everyone for being in attendance today.</p> <p>In-house counsel, Richard Bustamante, provided the Commissioners with a litigation update on the following matters: <i>NMHA v. NMRC – D-202-cv-2020-06564</i> – declaratory judgment seeking to invalidate the racing regulation allowing racetracks to request an offset of jockey & exercise rider insurance expenses from gaming monies. Court stayed until at least March 18, 2023 hoping horseracing stakeholders will work with the</p>	

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		<p>Legislature to amend the Gaming Control Act. December 28, 2022 NMHA filed a Petition for Writ of Superintending Control, this Petition is pending; <i>NMHA v. NMRC, et al. – D-202-cv-202100592</i> (Federal lawsuit) – on October 27, 2022 and November 4, 2022, the Court entered orders dismissing all claims for damages and all claims against the individual defendants. A single cause of action remains, which is against NMRC only and for which only injunctive relief is available. That cause of action alleges the NMRC’s June 2021 administrative order directing the tracks to cease the automatic 1% diversion to NMHA was in retaliation. The NMHA’s December 2022 motion to amend the complaint is still pending; <i>NMHA v. NMRC, et al. – D-202-CV-2021-03236</i> August 6, 2021, the District Court ordered NMRC to stay its administrative order while this case is pending. NMRC did so, but the 1% diversion had also been prohibited by the GCB, which was not subject to the Court’s order. The Court held a hearing acknowledging it had no authority to order GCB to do anything, however, would award NMHA attorney’s fees. No order has been entered and there are several other motions pending, including NMRC’s motion to dismiss.; <i>NMHA v. NMRC – D-202-cv-2022-03779</i> – During its June 2022 meeting, NMRC passed a motion to “unrecognize the NMHA” as the official representation in NM. NMHA appealed that order to District Court. No ruling as</p>	

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5. HISA/HIWU Updates	0:16:50 – 0:24:30	<p>of today.; and <i>NMHA v. Bregman, Smith, et al.</i> – NMHA filed a complaint with State Ethics Commission. The SEC dismissed nearly all of the Complaint, finding it had no jurisdiction over most of NMHA’s allegations. The SEC found it did have jurisdiction over only 2 claims, one against Bregman and the other against Smith. The SEC entered an order on December 2, 2022 dismissing those two claims as meritless. January 3, 2023 was the deadline to appeal the dismissal – no appeal was filed and SEC closed its case.</p> <p>Executive Director Trejo welcomed everyone to the meeting today and wished everyone a happy new year.</p> <p>Executive Director Trejo reported the federal courts’ Fifth Circuit deemed HISA/HIWU unconstitutional because the government did not have full authority over this legislation. Therefore, a “quick fix” was done the end of December 2022 wherein the FTC is now given more authority over the non-governmental private entity, HISA/HIWU.</p> <p>Even though the Fifth Circuit ruled that HISA was unconstitutional, HISA is still in effect in NM since NM is not part of the Fifth Circuit.</p> <p>The HISA safety program roll out was July 1, 2022, and has been in force in New Mexico. HISA</p>	

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	0:24:38 – 0:26:33	<p>understands the shortage of employees and is allowing a grace period to the New Mexico racing industry to be entirely in compliance.</p> <p>New HISA-related assessments (aka financial payments due to HISA by the tracks) were rolled out and will be looked at to be sure they are correct and fair.</p> <p>Commissioner Smith asked Executive Director Trejo what the dollar amount for the assessment by HISA for NM. Executive Director Trejo reported, it was initially \$1.7 million. However, he believes this amount will eventually be decreased a little bit. Commissioner Smith asked whether mixed meets in NM will make a difference with HISA. Executive Director Trejo reported mixed meets do present a lot of complexities for HISA.</p> <p>In-House Counsel, Richard Bustamante reminded everyone the purpose of this meeting is to come up with solutions to help the state of the horseracing industry in New Mexico. He reiterated Commissioner Sanchez in reminding everyone to “take off their blinders” and be open to the upcoming frank conversation. Everyone is expected to conduct themselves professionally, in a civil manner and respectfully. Anyone who fails to comply with the Commission’s request to conduct themselves as such, will be asked to leave and/or be escorted out.</p>	

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<p>6. Topics of Discussion:</p> <p>A. Current Strengths of NM Horseracing Industry</p>	<p>0:26:39 – 1:31:43</p>	<p>Mr. Don Cook of the Downs at Albuquerque shared his thoughts on purses in NM and the NMRC’s stance on medication violation penalties. Vice-chairman Sanchez added since slots were put in play in NM, the NM horseracing industry has generated over 1 billion dollars in purse money. Since 2004 the state’s horseracing industry has had \$660 million dollars for purses. That is a little over \$50 million a year in NM for purse money the State of NM has given the horseracing industry to keep it running and to enhance it. We need to take care of it.</p> <p>Mr. Rick Baugh of Ruidoso Downs also agreed the purse money in NM is a strength. Mr. Baugh said he also believes NM’s stakes program, and the unity amongst the racetracks are also strengths.</p> <p>Mr. Tom Gonchroff of the NMHBA read in a statement that “addressed” most of these issues.</p> <p>Mr. Dustin Dix of Sunland Park pointed out one of the strengths that is not listed are the customers. Mr. Dix also believes signature events (such as Sunland Derby and the Sunland Oaks) is a strength. It is Mr. Dix’s opinion slot machines only improved the horseracing industry, but the purse sizes in NM is really a strength.</p>	<p>No Action Taken</p>

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		<p>Mr. Steve Fedunak of SunRay Park said he agreed with all the strengths listed on the slideshow today, however, the fact everyone who showed up today to address these issues is huge and a great strength of New Mexico's horseracing industry.</p> <p>Mr. Mac Murray of NMHBA addressed the breeding topic in NM. Mr. Rick Baugh of Ruidoso Downs agreed the NMRC's stance on penalizing medication violators is great. Vice-chairman Sanchez recommended everyone call their Legislators and let them know we need more money to keep up the testing in New Mexico.</p> <p>Chris McErlean of Zia Park also agreed the drug testing in NM is one of the toughest ones in the nation and thanked the Commission for taking such a stance. He reported at the last Zia meet, there was only 1 positive test. He believes the long history of the horseracing industry in NM could be viewed as both a strength and a weakness. He said although the history is great, history tends to set people in their ways and be very resistant to change.</p> <p>Commissioner Buffington added he believes year-round racing with very little overlapping is a huge strength in NM. Commissioner Smith agrees minimal overlapping is a strength in a few different aspects such as it helps with NMRC</p>	

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<p>B. Current Weaknesses of NM Horseracing Industry</p>	<p>1:31:47 – 2:55:50</p>	<p>staffing issues which allows the Commission to focus the funds more on testing, etc.</p> <p>Mr. Mike Logan of NMHBA discussed the Stakes Program in NM being a great strength in New Mexico.</p> <p>Commissioner Smith asked Mr. Chris McErlean of Zia Park about his thoughts on fixed wagering in NM. Mr. McErlean said he doesn't believe fixed odds will resolve all of the problems in the state's industry. Mr. Dix added he thinks fixed odds are more like a "spoke in the wheel." He believes NM needs to get with the times and jump into the fixed odds betting here in NM. There was a brief discussion of ADW and fixed odds in NM.</p> <p>Mr. Don Cook said he has concerns about the lack of Stewards in NM, wonders if it is a pay issue, and questioned what the problem is getting Stewards to come work in NM. Executive Director responded it has been a struggle this past year and the NMRC has had a stroke of bad luck this past year finding Stewards. One of the issues was addressed this year by minimizing the overlap. Executive Director Trejo has also increased the pay of the Stewards, such that NM is almost at national level pay for stewards. As incentives, the NMRC pays for Stewards' lodging. Commissioner</p>	

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		<p>Buffington added the concerns over adequate pay should also be applied to gate crews, security, track employees, etc. as well.</p> <p>Mr. Cook is concerned about widespread abuse of Owner & Trainer Paper Licensing (Tracks Have No Idea Who Legitimately Owns or Trains Horses). Executive Director Trejo agrees this is a nationwide problem. The Commission has taken many steps to combat the problem. Mr. McErlean agrees this is an issue but a difficult one to get a handle on (more boots on the ground would help).</p> <p>Mr. Cook expressed concerns about poor performance standards not enforced due to shortage of horses (Mainly TBs).</p> <p>Mr. Baugh expressed his concern about the lack of breeding and the quality of thoroughbreds in NM. Mr. Dix added the lack of quality leads to the loss of pari-mutuel handle and issues related to the selling of simulcast signal in NM. Executive Director Trejo pointed out this is really NM attempting to sell a product. He believes NM needs a better quality of product to sell to get people to bet on NM horses from all over. There is a lot of competition and better race offerings out there for consumers to bet on. Not sure what NM has to do to attract people to bet in NM. Mr. McErlean believes this is a multi-layered problem and there really is no quick solution. Mr. Tom</p>	

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		<p>Goncharoff of NMHBA said he's talked to horsemen who prefer to race out of NM. Those persons advised they prefer not to race in NM because they don't feel as "welcomed" at the tracks in NM as they allegedly do at tracks in other jurisdictions. Commissioner Buffington agreed. He's heard that complaint as well.</p> <p>Expansion of gaming would be great for horseracing in NM and it is believed it would improve the industry. Commissioner Buffington believes if everyone in the room today is on the same page, and they should band together and approach the legislature for changes. Vice-Chairman Sanchez pointed out there is a gaming compact in the way.</p> <p>Mr. Baugh discussed the issue of trainer accountability and how many are seemingly not capable of adhering to the rules and regulations. Mr. McErlean agreed with Mr. Baugh's comments. He added everyone, including tracks, etc., should be held accountable. Mr. Linder added he believes everyone as an industry needs to tighten up the regulation on the backside, to improve the integrity of the industry in NM.</p> <p>Mr. Goncharoff stated he believes the continual erosion of race dates and the lack of opportunities are driving trainers out of state. He believes not</p>	

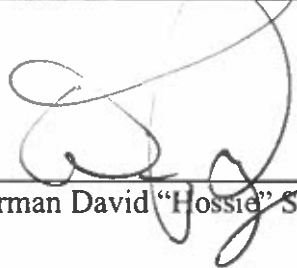
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		<p>only adding race dates, but also just adding races can fix this issue.</p> <p>Mr. Baugh discussed his concerns regarding NM Breeders Restrictive Rules. He believes change is needed.</p> <p>Mr. Dix expressed his concern regarding the economic model of horseracing. He says the model is broken and continues to lose money.</p> <p>Mr. Fedunak asked if any gamblers or other stakeholders would give ideas how to improve the reduction in simulcast wagering in NM. He believes this is an issue because this is an age where people would much rather stay at home gambling rather than go out and since NM does not have the option, NM is losing money.</p> <p>Mr. Dix, Mr. Fedunak, Mr. McErlean and Mr. Goncharoff all agreed everyone in this industry need to try to get along. Communication among all would improve relationships. Norma Alvarez of the NMHBA commented on this issue. Commissioner Smith asked Ms. Alvarez if she believes the NM Breeding Program needs improvement. Ms. Alvarez pointed the Commission to the numbers in the packet the NMHBA provided at the beginning of the meeting.</p>	

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<p>C. Concrete Solutions to Tackle & Improve Issues in NM Horseracing Industry</p>	<p>2:55:53 - end</p>	<p>Mr. McErlean discussed capital- & labor-intensive business cannot support its cost structure either on operations side or on horse ownership side causing reluctance to invest further from operators & participants.</p> <p>Mr. McErlean discussed that while placed in strategic locations throughout the state, long distances between tracks make shipping & transport difficult & expensive.</p> <p>Mr. Cook discussed the idea of separating TB and QH meet/Straight Meets to attract new horsemen. He said don't be surprised if the Downs comes to the NMRC seeking approval to run a straight meet, especially now with HISA coming into the picture. Mr. Dix agrees straight meets is the way to go. The Commissioners were open to this idea, however, pointed out it will take a lot of planning and communication between all five tracks for this idea to work.</p> <p>Mr. Cook believes the NMHBA should consider allowing foals dropped in NM by mares bred to out-of-state sires to be considered NM Bred Foals. We need more horses to be bred in NM.</p> <p>Mr. Baugh and Mr. Goncharoff expressed support for stronger penalties for class 1A & 2A drug violations – mandatory felony offenses/continue to tighten & strengthen enforcement of equine drug</p>	

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		<p>testing procedures & penalties given/increase penalties on trainers & owners, especially with multiple violations.</p> <p>Mr. Baugh suggested allowing Vet Techs to do more to free up the official vet to perform other duties to keep NM in compliance with HISA laws.</p> <p>Mr. Baugh suggested creating a robust breeding program to increase the number and quality of the NM Bred horses.</p> <p>Mr. Baugh commented racetracks must create “event driven products”, not just another day of racing in NM. They must put on the very best show. Mr. Fedunak added the tracks must keep the racing patron in mind and take care of the customers. Mr. Goncharoff agreed. Treating them well will bring them back.</p> <p>Mr. Linder commented on the idea of co-operative marketing campaign to educate fans about the industry and how to bet and in order to increase horse ownership.</p> <p>Mr. Dix suggested having a study commissioned by an unbiased entity to give recommendations for the future of NM horseracing.</p> <p>Mr. Fedunak suggested hiring a core-group of people to hire all year round for all five tracks.</p>	

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		<p>Mr. McErlean suggested reallocating the existing 20% funds being allocated just to purses/breeding funds – 15%; 1% each to racing focused capital projects at Racetracks; 1% for marketing/promotion of horseracing; 1% drug testing/NMRC enforcement; 1% equine aftercare; 1% Workman’s Compensation for trainers/jockeys. He acknowledged this is probably not a popular idea but believes it would be beneficial to take a look and perhaps push legislation to make some changes. State Representative Candy Ezzell commented on the law related to capital improvement in the State of NM.</p> <p>Mr. McErlean realizes this idea, again, is not a popular idea, however, he believes the NMAC Rules and statutes need to be looked at and changes considered to be brought up today. He also believes all the tracks in NM should coordinate condition books to promote consistency and stability and coordinate, year-round regarding state bred stakes program which provides opportunities for multiple divisions and spaced to maximize participation. He thinks all the tracks could do a better job in these matters.</p> <p>Mr. Goncharoff commented on the lack of consistency in the racing schedule. He said the NMHBA is concerned that there is no consistency,</p>	

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		and the race days keep decreasing. Commissioner Smith reminded Mr. Goncharoff this year's racing schedule is consistent. There is year-round racing, no dark weekends this year. Mr. Goncharoff also believes the Commission should allow public comments at meetings again. The Commissioners said public comments would be allowed if they were respectful and thoughtful comments.	
7. Adjournment at 1:45 PM			



3-23-23

Vice-Chairman David "Hossie" Sanchez Date



3-23-23

Executive Director Ismael Trejo

Date