



**Board of Trustees Emergency Meeting
Evening Zoom Video Conference**

**March 12, 2021
6:00 p.m.**

PRESENT

President Tom Goncharoff, 1st Vice President Mike Logan, 2nd Vice President Verner R. Query (late arrival) and Trustees Vanessa Alexander, Norma Alvarez, Mark Brown, C. Warren Franklin, Annette McCloy, Mac Murray, Helen Nave, Susie Prather, & Nancy Summers.

ABSENT

None

QUORUM

President Goncharoff acknowledged a quorum present.

PURSE TAX AGREEMENT

President Goncharoff asked if the Trustees had a chance to read the Purse Tax Agreement that was sent to them as well as the information from the attorney. The relevant part of this Purse Tax Agreement that is causing us some concern is on page three, paragraph four. Basically, it is a lot of legal talk and by signing this, the horsemen and the breeders would be waiving our rights to sue or protest if the racetracks decide to change dates or cancel a race meet. He asked Mary Barber if there were any other concerns. She was surprised about the division of funds that are stated in the Purse Tax Agreement and feels that we should have been consulted on the funds we have for New Mexico Bred races. She also brought up that Zia Park had somewhere around \$600,000 left over from their meet and there has been talk that they should have to retro those funds. This way they can just contribute them to Ruidoso Downs in the Purse Tax Agreement and the horsemen and breeders, by signing this agreement, have waived the right to say anything about it.

President Goncharoff explained that our attorney advised us to make sure the entire board knows about this document and votes on this issue. This is pretty unusual language. This was not present in last year's Purse Tax Agreement. Last year's was pretty straight forward.

Mike Logan feels that this paragraph four on page three exonerates the racetracks from following the Horse Racing Act. This paragraph was not in the 2020 Purse Tax Agreement in which the horsemen and the breeders participated in and this year the new 2021 Purse Tax Agreement was drafted, he assumes by the racetracks alone. He has reached out to some horsemen and they are in

the dark and are unaware that this is even happening. They have not signed it yet, at least with the approval of their board.

Mary Barber reported that she and Richard Erhardt had both received the Purse Tax Agreement during the horsemen's board meeting the day before from Fred Heinrich, the attorney for Sunland Park. She had not had any correspondence with the racetracks, other than a brief unofficial conversation with Jeff True, and had contacted Richard Erhardt to ask if he had any communications with the racetracks on this subject. He responded that he had a few short discussions to see if they were willing to have a Purse Tax Agreement but was not invited to any meetings and was as surprised as I was when he received the email the day before. This morning he had called the NMHA lawyer Gary Mitchell to ask his advice about whether they should sign the document or not and was told that they should go ahead and sign it and that they had to pick their battles. This was the only way that Ruidoso Downs would be able to have a race meet in 2021. Richard Erhardt informed Mary Barber that he would be polling his state board members for their votes on whether to sign this document or not. Mary Barber commented that she had just received a text from an NMHA board member to ask if we knew about paragraph four on page three of the Purse Tax Agreement so they or at least some of them are aware of this language.

President Goncharoff reminded the board that we just received this yesterday and have been pressured to sign it and get it back. Mary Barber responded that she was shocked when she got it and called Fred Heinrich to see if she could make any adjustments and was told she could not. They are instructing me that I can take \$300,000 from Sunland Park's stakes money for New Mexico Breds and give it to Ruidoso Downs and can also take up to \$200,000 from Zia Park and give it to Ruidoso Downs. This is not what I would like to do. I have \$2.1 million for Sunland Park and only \$400,000 for Zia Park and Zia Park will run first and have less time to grow their purse funds and Sunland Park is open and will have a lot of money stored up for 2022. I would have like to take it all from Sunland Park. I also wanted to be allowed to take some for SunRay Park if I should need to. I think we will be okay at SunRay Park but if they fill up with New Mexico Breds it might not be enough. The only good thing is this document only affects 2021 and then it ends.

President Goncharoff asked the Trustees to comment.

Helen Nave asked a question about the wording on number 13 that said that this would be a variance from 15.2.29. Mary Barber responded that she would have to look it up, but she thinks it is saying that normally purse sharing is not allowed. We have only done this because of the Pandemic and being shut down. This is also contingent upon Commission approval. She is pretty sure that this language was in the first Purse Tax Agreement. She checked and the language had not been changed.

Nancy Summers feels it is interesting since she just spoke to Flaco Cappellucci about this a half hour ago and he did not know about this paragraph four. President Goncharoff thought it was strange that their attorney thought they should go ahead and sign it. Mary Barber interjected that Richard Erhardt told her earlier in the day that he was going to poll his board and made her think that boy she probably should poll our board as well. Then later the attorney instructed her not to sign this without the board voting to do so. Nancy Summers said that it sounds like Paul Blanchard is using this to not have to run until the end of August and only run a short meet.

Norma Alvarez asked if our attorney suggested that we send back the document offering substitute wording. President Goncharoff stated we are going to follow the wishes of the board, but if we decide to not sign this document, we need to have our attorney write a letter outlining our reasons

for not signing the agreement and send it back to Fred Heinrich. They may do this without us and without the horsemen. But this is telling us that we would have to agree to violate another statute and agree to not be able to have any recourse is troubling to say the least. They are also doing this at the last minute.

Mary Barber reported that she had received an amended NMRC agenda. They will now be discussing in Executive Session the litigation from the horsemen, the Purse Tax Agreement, and possible changes to the race dates.

Mike Logan pointed out that the first signature was done on 3/7 so it has been out there for a while, but they did not send it to us until yesterday. He compared the two Purse Tax Agreements from 2020 and 2021. He wanted to know if we have had any feedback from the Commissioners. President Goncharoff had been called by Billy Smith and wanted to know if we had signed it yet. He explained that we had not yet, and we have reached out to our attorney and hopefully will hear from him soon. He asked Billy if he had seen it and he had not. He told him he needed to read it because he did not think that Billy would sign it if this were one of his business agreements. He thinks that Mr. Heinrich is who came up with all this legal language. He offered to pause the meeting to go and call Billy Smith to see if he has any news and left the meeting to go do that.

Mike Logan mentioned that some of the verbiage is similar but in 2020 they were very precise on how many days and how many races would be run per day. In the 2021 document there is nothing like that. He asked Mary Barber if she had any issues with the verbiage of 80.7% to the horsemen and 19.3% to the breeders. Mary Barber replied that is the correct split of the gaming funds we receive out of the 20% to purses.

Mark Brown said that the one difference he can see is they are trying to get this done so they can assign dates to SunRay and Ruidoso. It is a no brainer why they put this verbiage in here. They are trying to protect themselves from a lawsuit. Mary Barber reported that these dates were already set. He thinks it is just common sense for them to protect themselves and that is why they have added that language. Mike Logan stated that we do not have any litigation against the racetracks. The horsemen do but that is against the Commission. Mark Brown said there was talk last year about suing Sunland Park for not running. He thinks if we do not sign this there will not be a Ruidoso Downs meet. Mary Barber reminded the Trustees that this time around their casinos are open when last year they were closed. They are being allowed to have their casinos open without anyone having a live race meet due to the pandemic and the need to build purse money.

President Goncharoff rejoined the meeting and told the Trustees that Billy Smith said that he spoke to Sam Bregman who explained that if we or the horsemen do not sign the agreement, there will be no money transferred to Ruidoso Downs. Mark Brown thinks this is a moot point. Ruidoso Downs is the most important racetrack and if we shut that down, we will hurt horseracing in New Mexico for years to come. It is in the statutes that the Commission can approve this because of the pandemic. He thinks we need to sign this agreement. President Goncharoff also was told by Billy Smith that the race dates will be changed, and that Zia Park will run as planned from September 27th through December 15th and will only run three days a week. The Downs will run starting August 28th and will run 19 days total. Ruidoso will run May 28th to September 6th. Sunland Park will not be decided until later what their 2022 race dates will be.

Mike Logan reached out to Jeff True, and he is willing to join our Zoom meeting and will try to explain this wording. Mary Barber sent Jeff the Zoom invitation. Jeff True Joined the meeting.

President Goncharoff informed Jeff True that paragraph four on page three is giving us pause. We have consulted our attorney and he recommended against Mary Barber or Tom Goncharoff signing this document without the consent from our board members. He explained that he called Billy Smith and was told that if we do not sign this, we risk not being allowed to transfer funds to Ruidoso Downs. Jeff True has not spent any time on this legal question. His understanding is that no party has a unilateral right to move purse money. It takes all of us to do this and the only way to resolve that is to file a suit and have a judge tell us. This paragraph is just saying that we will not come back in six months and get ourselves in legal jeopardy to do this. He was not included in the writing of the Purse Tax Agreement.

President Goncharoff stated that we do not want to harm Ruidoso Downs but we kind of have a gun to our head. He thinks what we may do is have our attorney take another look at this and suggest some new language. When talking to the Commissioners it is a take it or leave it deal and he thinks it goes back to the lawsuit the horsemen have against them.

Jeff True thinks that this language was put in this agreement to prevent legal action against them, and it is because of all the things that have been said by people and written on social media about doing just that. It may be over protection by the authors of the document, but this is just for 2021. They are just saying that they will do it only if they will not be sued for doing it after the fact.

President Goncharoff stated that what causes us concern is what the Commission is going to do in the future. It is understandable that the breeders and even more so the horsemen, are worried about these issues. The only constant that New Mexico seems to have is Ruidoso running their full meet. So, if we risk not sending purse money your way, then what have we done to ourselves.

Jeff True thinks we will be having the same purse structure for the rest of the year at all the New Mexico racetracks. He has said that we have to decide by the March 18th meeting whether they are opening the racetrack on April 15th and live racing on May 28th. They cannot go past that and get it done. The result of this agreement is going to do nothing but get us where we want to be. He thinks it is the best outcome we can hope for.

Mike Logan asked Jeff True what kind of timeline we have for getting this signed and getting it turned in. Jeff replied that it needs to be done by the Commission meeting on March 18th. Ruidoso Downs is going to ask the Commission to change their days slightly. They will open on May 28th and this will reduce their days to 47. He had asked for the 50 days with the extra week in order to get the time between trials and finals, but they just did not have the money to do that this year.

President Goncharoff thanked Jeff True for coming to our meeting. Jeff True said that he appreciates the opportunity to talk to us about this. He is not happy about any of this, but he thinks this is just one of those pills we have to swallow. He encourages us to support it. Jeff then left the meeting.

Mark Brown made a motion that we sign this agreement.

Mike Logan added that we may want to consult our attorney again. He does agree with Mark Brown that it is imperative that we get Ruidoso running. It has too many ramifications.

Susie Prather asked what the harm would be to consult the attorney again? President Goncharoff suggested that we vote now and then get a letter from our attorney to go along with the document.

Nancy Summers asked if we could just wait one more day and get a little more information before making our decision. This makes her uncomfortable that this language was slipped in this document. They could just cancel racing and have their casinos open for a year. That would give them the right to do that.

Annette McCloy thinks we have to get racing going. We have to start somewhere. It has been a horrible year, but we have to get started as soon as possible.

There was more discussion between the trustees.

Nancy Summers would like to wait to see what the horsemen decide. She feels we need to have be united on this. We can have another meeting on this once we know their decision? Nancy Summers left the meeting to contact Flaco Cappellucci to see if there has been any decision made yet.

Mark Brown stated that his motion is to sign the Purse Tax Agreement. He is happy to amend it to say that we will include a letter from our attorney to go with it.

Nancy Summers reported that Flaco does not think that Gary Mitchell read the entire agreement or was aware of that paragraph four on page three. There have only been four horsemen respond yet but will have an emergency meeting tomorrow. They do agree to move the money but still need to decide on the other issues.

Warren Franklin does not like being pushed around and every time we deal with these matters, we lose some of our control. However, what are we going to do this year anyway. He thinks we should just sign it so we can get the ball rolling and get to run our horses.

Verner Query feels that the wording of it is really terrible, but we do need to get racing going. He can live with this going on for this one year. He is worried that will they try to continue this way. We need to sign the letter but then include a letter from our attorney expressing our concerns.

Mac Murray thinks that based on what Jeff True said, and everything we have discussed, he agrees with Mark Brown and seconds the motion. If you do not take a chance, you do not have a chance.

President Goncharoff does not think we need to wait on the horsemen to make our decision.

Warren Franklin asked if we cannot ask them to make any changes to the agreement. Mary Barber had asked if she could adjust the figures and was told that there would be no changes to the document.

Mary Barber went over the motion.

Mark Brown made a motion to sign the Purse Tax Agreement and include a letter with our concerns from our lawyer, seconded by Mac Murray.

Mike Logan said he would abstain but after further thought he changed his mind and voted.

Motion carried 6:5.

Mike Logan would like to go on record that this pill did not taste good.

Warren Franklin asked if we could still delay our response. Mary Barber explained that we cannot even contact the lawyer until Monday. Mac Murray thought that by then we should know how the horsemen feel and could call another meeting to discuss this again.

Verner Query thinks that we are debating this between ourselves, but the Commission is saying you have to do this in order to move the funds.

Mac Murray thinks we should go forward with our vote but because of the situation between the horsemen and the Commission, they could go forward without the horsemen's approval although they would like to have everyone in agreement.

**After more discussion, Norma Alvarez made a motion to adjourn, seconded by Mike Logan.
Motion carried 11:0.**

**Tom Goncharoff
NMHBA President**

**Mary M. Barber
Attest**