New York State Office of the State Comptroller
Thomas P. DiNapoli
Division of State Government Accountability

Capital Program Revenue and Expenses

New York Racing Association, Inc.

Report 2014-S-54 October 2015

Executive Summary

Purpose
To determine whether the New York Racing Association, Inc. received the appropriate amount of Video Lottery Terminal (VLT) revenues for its capital program as stipulated by statute, and whether NYRA officials used these monies appropriately. Our audit covered the period January 1, 2012 through June 30, 2014.

Background
The New York Racing Association, Inc. (NYRA) holds the exclusive franchise to operate New York State's three major thoroughbred racetracks: Aqueduct Racetrack, Belmont Park, and Saratoga Race Course. Annual attendance at NYRA facilities approximates 1.8 million, with about $2.3 billion in all-sources wagering handle (e.g., on-track, simulcast) each year. In November 2006, NYRA officials filed for bankruptcy due to its poor financial condition. In September 2008, upon renewal of its exclusive franchise, NYRA entered into a bankruptcy settlement agreement that conveyed all rights, titles, and interests in the racetrack properties (land and buildings) to New York State in return for a financial assistance package.

In 2011, Resorts World New York City Casino (Resorts), operated by Genting New York (Genting), opened adjacent to Aqueduct Racetrack. According to NYRA's Franchise Agreement with New York State (Agreement), a percentage of Resorts' VLT revenues (Net Win) are to be directed to NYRA for enhanced purses, operational support, and capital expenses. In 2012, a temporary, State-controlled (Reorganization) Board of Directors was put in place to oversee NYRA operations. For the period January 1, 2012 through June 30, 2014, NYRA received about $259 million in revenue from Resorts, distributed as follows: $56 million for operations; $129 million for purses; and $74 million for NYRA's capital program.

Key Findings
- We found adequate controls over the VLT revenues collected by Resorts and the transfer of such funds to NYRA. However:
- NYRA officials lacked an adequate capital planning function. NYRA officials had not developed a long-term (multi-year) capital plan, and NYRA's annual plans lacked pertinent details, such as completion dates, the projects to be financed, and support for their associated costs;
- Several of the actual capital projects initiated and/or completed by NYRA during the audit period were not on any of its annual plans, and several of the projects on the plans were not initiated;
- As a result of inadequate project planning, NYRA could be obligated to pay $2.3 million dollars more for a project than was originally anticipated;
- In addition, for part of the audit period, NYRA used material amounts of capital program funds for routine maintenance costs.

Key Recommendations
- Develop long-term (multi-year) capital plans that outline how available capital program monies will be used to promote NYRA's long-term capital program goals and operational goals (e.g., enhanced safety, attraction of additional customers).

- Develop annual capital plans that detail each project's need/justification, timeframe for completion, and project cost estimates.
- Develop and implement a formal project management system to effectively monitor the status of projects in long-term and annual capital plans.
- Minimize the extent to which VLT capital revenues are used for non-capital (operational) purposes.

Other Related Audits/Reports of Interest

New York Racing Association: First Interim Report on our Ongoing Audit of NYRA Operations (2010-S-54)
New York Racing Association: Cost Savings Actions (Follow-Up) (2011-F-16)

State of New York
Office of the State Comptroller

Division of State Government Accountability

October 14, 2015

Mr. Christopher K. Kay
President and Chief Executive Officer
New York Racing Association, Inc.
PO Box 90
Jamaica, NY 11417-0090

Dear Mr. Kay:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Capital Program Revenue and Expenses*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 209 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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Background

The New York Racing Association, Inc. (NYRA) is a not-for-profit corporation that holds the exclusive franchise to operate New York State's three major thoroughbred racetracks: Aqueduct Racetrack, Belmont Park, and Saratoga Race Course. Annual attendance at NYRA facilities approximates 1.8 million, with about $2.3 billion in all-sources wagering (e.g., on-track, simulcast) each year.

In November 2006, NYRA filed for bankruptcy due to its poor financial condition. At that time, NYRA had incurred an accumulated operating deficit of more than $135 million. In September 2008, upon renewal of its exclusive franchise, NYRA entered into a bankruptcy settlement agreement. Under this agreement, NYRA conveyed all rights, titles, and interests in the racetrack properties (land and buildings) to New York State in return for a financial assistance package. As part of this package, the State forgave nearly all of NYRA's debt obligations (totaling $54.1 million) to the State and provided NYRA with $105 million to liquidate about $80 million in non-State debt, leaving NYRA with a cash balance of about $25 million. A Franchise Oversight Board (FOB) was formed to oversee NYRA's financial operations.

In October 2011, Resorts World New York City Casino (Resorts), operated by Genting New York (Genting), opened adjacent to Aqueduct Racetrack. According to NYRA's Franchise Agreement with New York State (Agreement), a percentage of Resort's Video Lottery Terminal (VLT) revenue is directed to the State to fund education and various percentages of revenue (Net Win) are directed to NYRA for the following purposes: enhanced purses (7.5 percent), operational support (3 percent), and capital expenditures (4 percent). (Note: Net Win is the gross wagering less payouts.)

In 2012, a temporary, State-controlled (Reorganization) Board of Directors was created to oversee NYRA operations. The Reorganization Board (Board) consists of 17 members: eight appointed by the Governor; two each appointed by the Senate and Assembly; and five appointed by the former NYRA Board. In the spring of 2015, the Governor and Legislature extended the duration of the Reorganization Board for an additional year, ending October 2016.

For the period January 1, 2012 through June 30, 2014, NYRA received about $259 million in revenue from the casino, distributed as follows: $56 million for operations; $129 million for purses; and $74 million for NYRA's capital program.

Audit Findings and Recommendations

We found adequate controls over the VLT revenues collected by Resorts and the transfer of such funds to NYRA, in compliance with statutory requirements. However, we also found that NYRA officials lacked an adequate capital project planning function to guide the use of VLT revenues. NYRA officials had not developed a long-term (multi-year) capital plan, and its annual plans lacked pertinent details regarding the projects to be financed, such as completion dates, and support for their associated costs. In fact, several of the actual capital projects initiated and/or completed by NYRA during the audit period were not on any of its approved annual plans. Conversely, several of the projects on approved plans had not been initiated.

For one major project, a simulcast center and sports bar known as Longshots, NYRA could be obligated to pay about $2.3 million (about 32 percent above the original project cost) for change orders. Given the nature of the change orders, there is considerable risk that a material portion of the costs could have been avoided with better planning. In addition, for part of the audit period, NYRA charged capital program funds for routine maintenance costs that probably should have been charged to NYRA's operating budget.

Controls Over Video Lottery Terminal Revenues

As noted previously, Resorts is required to provide NYRA with 4 percent of the VLT revenues collected to be used exclusively for capital expenditures to maintain and upgrade its three racetracks. To ensure that NYRA received the correct amount of VLT revenues, we reviewed the controls in place over the collection and distribution of VLT revenues. The VLTs operate through a system developed, maintained, and controlled by an independent contractor (Multimedia Games) for the New York State Gaming Commission (Gaming). Gaming posts the VLT revenues each week to the New York Lottery website and simultaneously reports the information to Resorts. Resorts then wires the mandated VLT revenues to designated accounts at NYRA.

NYRA performs a monthly VLT revenue reconciliation to confirm that the Net Win summary report provided by Resorts agrees with the New York Lottery website and the monies deposited into its accounts. Also, we confirmed that Multimedia Games' system operations are evaluated annually by an independent accounting firm, which performs a "Statement on Standards for Attestation Engagements" review. These reviews have not identified any significant deficiencies.

Long-Term and Short-Term Project Planning

As of June 30, 2014, NYRA's capital program expenditures account had a balance of $15.1 million, of which $11.8 million was accumulated during our audit period. Table 1 summarizes NYRA's VLT revenues, use, and accumulated surplus during the period of January 1, 2012 through June 30, 2014.

Table 1

Year	Capital VLT Revenue Received	How Capital VLT Revenue Was Spent			Capital VLT Account Surplus Accumulation
		Capital Projects	Repairs/ Maintenance	Loan Repayment	
2012	$26,918,161	$10,680,433	$10,111,319	$4,577,206	$1,549,203
2013	31,553,304	15,467,128	1,555,411	7,851,289	6,679,476
2014*	15,767,923	10,186,091	-	2,010,135	3,571,697
Subtotal	**$74,239,388**	**$36,333,652 (48.9%)**	**$11,666,730 (15.7%)**	**$14,438,630 (19.5%)**	**$11,800,376 (15.9%)**

*2014 covers the period from January through June

As noted in Table 1, during the audit period, NYRA spent $36.3 million on capital projects, $11.7 million on maintenance costs, and $14.4 million on NYRA's debt obligation to New York State. If recent trends continue, NYRA will receive about $30 million annually from Resorts' VLT revenues to help fund its capital program. Given the magnitude of those revenues, NYRA officials should ensure they are spent effectively and efficiently to maintain and improve NYRA's facilities. In 2011, NYRA's Franchise Oversight Board cited the need for NYRA officials to revisit, and update as appropriate, its capital plan in consideration of the associated revenues NYRA would receive pursuant to the franchise agreement.

Sound business practices include both long-term and short-term capital project planning. Such planning serves to identify and prioritize anticipated needs based on a strategic plan. Effective capital project plans establish a clear project scope accompanied by detailed estimates of costs and timelines for project phases and final completion. Such planning not only establishes an entity's capital project needs, but helps establish overall budgetary control as well. Often, long-term capital plans range from three to five years and are supplemented by annual plans that distinguish short-term from long-term needs. Also, capital program plans should have the flexibility to address unexpected situations, including those impacting the health and safety of NYRA staff and patrons.

We asked NYRA officials for their long-term and short-term capital plans, and they provided us with two sets of annual plans for calendar years 2012, 2013, and 2014. One version of the plans (Capital Spending Plans) is submitted to NYRA's Board of Trustees each year for approval; it describes upcoming capital projects by general categories, such as "Patron Areas" or "Track and Infield Upgrades." The general categories are each supplemented by a paragraph narrative explaining the need for the project (see Exhibit A).

The other version of the plans we received (Proposed Capital Projects) had greater detail and further divided the general categories into more specific areas, such as "Infield Video Boards" or "Box Seat Area–Ceiling Abatement" (see Exhibit B). The Proposed Capital Projects also noted whether the proposed project was safety related, intended to reduce costs, or meant to produce revenues.

However, NYRA officials lacked documentation to support the annual plans, including the resources necessary to execute the projects and/or support for their associated costs. As such, it is unclear that the proposed projects accurately reflected NYRA's most pressing capital needs. Further, NYRA did not have any formal "long-term" plans to provide an overall vision of where NYRA officials intend to go with their collective projects and to explain how the projects listed on the annual plans related to those long-term goals.

NYRA officials told us that they are not statutorily required to prepare a five-year capital plan until the five-year anniversary of VLT operations at Aqueduct, or October 28, 2016. At that time, the officials plan to submit a long-term (five-year) plan to the Franchise Oversight Board. Nonetheless, consistent with the Board's 2011 guidance, and considering the deficiencies noted in our report, we maintain that NYRA officials should take the necessary steps to develop adequate short-term and long-term capital plans now to help preserve and improve its facilities.

Disparities Between Annual Plans and Actual Projects

We asked NYRA officials for a list of capital expenditures (projects and equipment) made during the audit period for testing and analysis. We selected a sample of 25 projects (see Exhibit C), totaling $7 million, and found that all of the sampled projects or procurements had been completed or received.

However, we also found that not all of the projects we looked for were listed on any of the annual plans we received, and conversely, each of the annual plans listed projects that were not done during the audit period. Specifically, NYRA spent a total of $7.4 million ($3.8 million in 2012 and $3.6 million in 2013) on 198 capital projects that were not part of the annual plans for these years, and as such, these projects were not approved by NYRA's Board of Trustees. Some examples of expenditures that were not part of the approved capital plan included:

- $290,000 for Aqueduct simulcast upgrades in 2012;
- $197,000 for upgrades to NYRA's accounting and purchasing systems in 2013; and
- $101,000 for signage at Belmont in 2013.

Conversely, we identified 114 projects (valued at $13 million) on NYRA's approved annual plans for 2012 and 2013 that were not initiated anytime during the audit period. Examples of the 114 projects included:

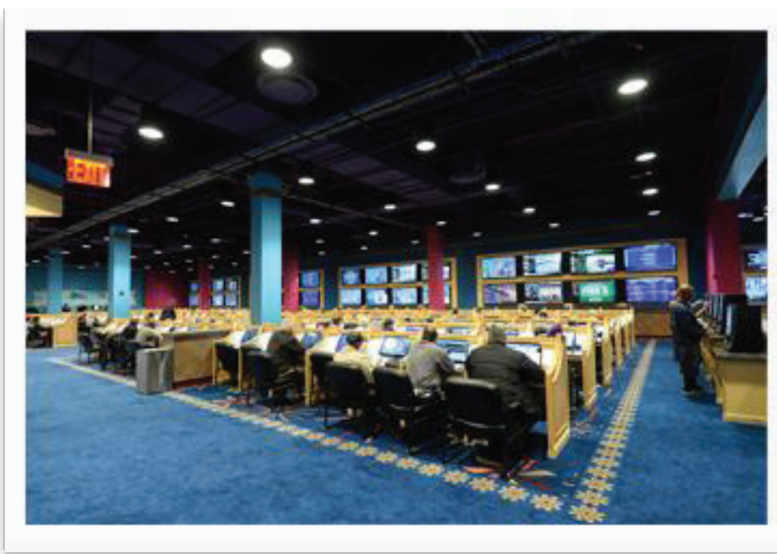
- $1 million for air conditioners for the first- and second-floor clubhouse at Aqueduct (2012 plan);
- $250,000 for ceiling abatement – box seats at Aqueduct (2013 plan);
- $100,000 for fire alarm upgrades in the Belmont backstretch (2013 plan).

NYRA officials told us that they were unable to begin some of their planned projects because of delays in receiving the required building permits. However, the documentation that they provided to us pertained to only two of these projects with a corresponding value of $250,000.

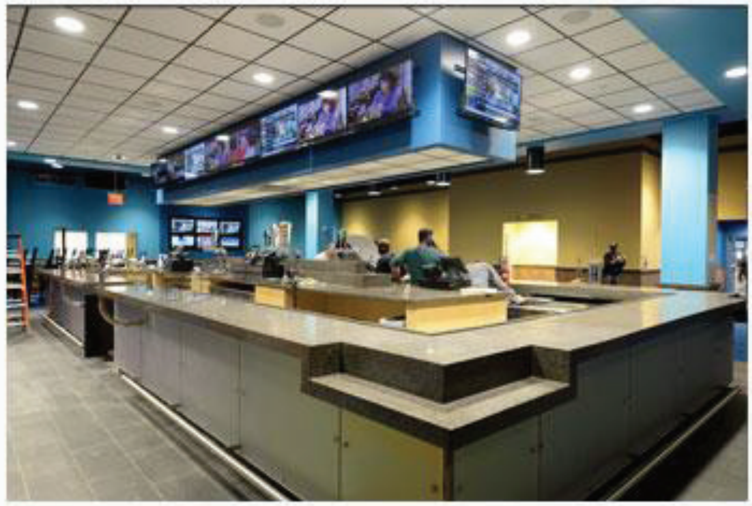
In addition, NYRA's food and beverage agreement with Genting required Genting to construct a new simulcast center and sports bar, known as Longshots, at Aqueduct Racetrack. The agreement did not detail the specific project requirements, except that Genting would finance up to $5 million of the facility's construction costs, and NYRA would finance project costs above that amount. According to the contractor's application for payment, initial project costs approximated $7.1 million. However, after 35 change orders totaling $2.3 million (adding about 32 percent to the project's cost), Longshots' total cost was $9.4 million. Thus, NYRA's total financial obligation for Longshots could be about $4.4 million (total cost of $9.4 million minus the $5 million paid by Genting).

The three largest change orders, exceeding $1 million, related to the installation of audiovisual equipment and HVAC-related work. Because these items were basic to an indoor simulcast center, we question how and why they were overlooked to such an extent in the original planning and design of Longshots. At the time we concluded our audit fieldwork, NYRA had paid about $3.3 million for Longshots. However, NYRA officials disputed the remaining $1.1 million ($4.4 million minus $3.3 million) claimed by Genting, and were negotiating with Genting to resolve the matter.

Longshots was originally scheduled for completion in the fall of 2012. However, due in considerable part to the change orders, it did not open until the spring of 2014. Moreover, we conclude that NYRA's lack of comprehensive detailed capital plans likely contributed to the $2.3 million in change orders for Longshots that NYRA could be obligated to pay. There is considerable risk that material portions of these costs could have been avoided with better planning.



Longshots seating area



Longshots bar area

Use of Capital Funds for Maintenance and Operations

According to the Agreement, NYRA should use the VLT revenues it receives for its capital program for maintaining and upgrading its racetrack facilities. This agreement language has been broadly interpreted by NYRA officials to include routine maintenance activities (e.g., painting, minor repairs) as allowable uses of VLT monies. Based on the Agreement's language, we concluded that NYRA officials do in fact have considerable discretion in how they use these monies.

We note, however, that financial reporting standards for both government and private industry define a capital expense as an amount spent to acquire or improve a long-term asset, such as equipment or buildings, with a useful life greater than one year. This concept is reflected in the notes to NYRA's annual certified financial statements. Moreover, during calendar years 2012 and 2013 (the first two years NYRA benefited from the VLT revenues), NYRA officials used the VLT capital revenues for routine maintenance as well as true capital projects. As shown in Table 1, almost $11.7 million (15.7 percent) of the VLT capital revenue received was spent on repairs and maintenance items, including supplies for plumbing, painting, and the administrative offices. Generally, such items are considered routine operating expenses. By using capital funds for these expenses, NYRA officials freed up general operating funds that would normally be used for building maintenance for other general operating purposes.

Also, the "Loan Repayment" category (in Table 1) refers to a $25 million loan provided to NYRA in 2010 under an agreement between NYRA and the Empire State Development Corporation, the State's economic development agency. Section 2.03 of the loan agreement states, "The Loan is to be used for the Borrower's operating expenses at Aqueduct, Belmont and Saratoga racetracks." Although the purpose of the loan was to be used exclusively for operating expenses, it was repaid in large part through capital funds as well as VLT operational revenue under the direction of the New York State Lottery.

Although NYRA officials did not violate the applicable provisions of the Agreement, the use of capital program monies for non-capital purposes could compromise NYRA's presentation of the related expenses in its financial statements, which should fully comply with the prescribed professional standards. Further, the extent to which capital funds are used for general operations would tend to reduce the amount of money available for genuine capital project purposes.

Recommendations

1. Develop long-term (multi-year) capital plans that outline how available capital program monies will be used to promote NYRA's long-term capital program goals and operational goals (e.g., enhanced safety, attraction of additional customers).

2. Develop annual capital plans that detail project needs and justifications, timeframes for completion, and estimates of costs, as well as an explanation of how each project relates to NYRA's long-term capital plans and operational goals.

3. Develop and implement a formal project management system to effectively monitor the status of projects in long-term and annual capital plans.

4. Minimize the extent to which VLT capital revenues are used for non-capital (operational) purposes. Further, use applicable generally accepted accounting principles and Internal Revenue Service guidelines to distinguish costs for capital projects from those normally incurred for routine maintenance (operating) needs.

Audit Scope and Methodology

The objectives of our audit were to determine whether NYRA received the appropriate amount of VLT revenues for its capital program as stipulated by statute, and whether NYRA officials used these revenues appropriately. Our audit covers the period January 1, 2012 through June 30, 2014.

To accomplish our objectives and assess related internal controls, we interviewed officials from NYRA, Genting, the New York State Gaming Commission, and the Franchise Oversight Board. We reviewed relevant documents, including NYRA's general ledger, financial records and bank statements, monthly VLT revenue reports from Genting, summary records of capital expenditures, annual capital project plans, and available project planning files for selected projects. We also visited the three NYRA racetracks and verified that the sampled purchases were made and the sampled projects were completed.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 209 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law.

Reporting Requirements

We provided a draft copy of this report to NYRA officials for their review and formal comment. We considered NYRA's comments in preparing this final report and attached them in their entirety to the end of the report. In their response, NYRA officials agreed with our conclusions regarding controls in place over VLT funds. However, officials generally disagreed with our conclusions regarding deficiencies in NYRA's long-term and short-term capital planning efforts. Our rejoinders to certain NYRA comments are included in the report's State Comptroller's Comments.

Within 90 days after the final release of this report, we request NYRA's Chairman or Chief Executive Officer report to the State Comptroller advising what steps were taken to implement the recommendations contained in this report, and where the recommendations were not implemented, the reasons why.

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit A

2013 CAPITAL SPENDING

For 2013, NYRA plans to invest $20.8 million in capital improvements. These projects will enhance the customer experience, upgrade conditions within the barn area and increase NYRA's operational efficiency. Additionally, $7.1 million in 2012 projects which primarily consist of the construction of dorms at Belmont, completion of the CAFO upgrades and miscellaneous upgrades to the patron area and track and field at all three tracks is projected to be substantially completed in 2013.

(in thousands)	2013 BUDGET
AQUEDUCT	
Patron Area Improvements	$2,025
Group Sales/Dining	2,300
Barn Area Construction/Upgrades	910
Track and Infield Upgrades	200
Other	12
	5,447
BELMONT	
Patron Area Improvements	1,300
Barn Area Construction/Upgrades	2,405
Track and Infield Upgrades	525
Group Sales/Dining	150
Other	272
	4,652
SARATOGA	
Barn Area Construction/Upgrades	1,680
Patron Area Improvements	1,290
Other Frontside Improvments	1,091
Track and Infield Upgrades	700
Group Sales/Dining	180
	4,941
NYRA TV	2,146
FLEET EQUIPMENT	1,516
INFORMATION TECHNOLOGY	
Infrastructure	1,892
Other	206
	2,098
Total Proposed Capital Expenditures	**$20,800**

Aqueduct

Patron Area Improvements

- Aqueduct has experienced a significant increase in foot traffic and wagering since the opening of Resorts World late last year. In 2013 NYRA plans further improvements to increase the overall appeal to customers. These improvements include the purchase of video boards to be used for Aqueduct and Saratoga, (this will limit the wear and tear of the current boards and save on transportation costs), renovations to the first floor, which will include new murals on the walls, consistent paint schemes, and updated televisions, signage enhancements (including branding and uniform signage), installation of new gang seating, installation of security cameras and ceiling abatement in the box seat area.

Group Sales and Dining

- NYRA will invest in the completion of Longshots, a state of the art simulcast center scheduled to open in July 2013. The center will have a capacity of 522 with one section to be used exclusively for NYRA Rewards customers. The opening of Longshots is expected to bring in a new customer base that will significantly increase revenue. As part of the agreement with Resorts World, Resorts World will pay for $5 million of the costs and NYRA will pay the excess costs.

Barn Area Construction/Upgrades

- In 2013, NYRA will invest in upgrades to the electrical system and replace old/damaged barn roofs. The new metal roofs come with a forty year guarantee that are 50% cheaper than slate roofs and will reduce maintenance costs while also creating safer barns for horses. Additionally NYRA plans to upgrade ventilation within the barns, renovate the dorms to meet fire marshal requirements and build an ice building/install ice machine to be used by horsemen throughout the year to prevent and treat equine injuries.

Belmont

Patron Area Improvements

- In 2013, NYRA will invest in several projects that will further improve the patrons' experience. These projects include backyard renovations, television upgrades to more modern flat screens throughout building, continue lighting retrofit, restroom upgrades, box seat upgrades and replace the Marquee tent with a permanent foundation, which will decrease rental costs of tent, look more appealing to customers and can be used more often.

Barn Improvements

- Improvements to the barn area have been ongoing at Belmont. In 2013, NYRA will replace barn roofs with long lasting metal, and remove asbestos where necessary, in order to reduce the amount of maintenance currently being experienced, upgrade cottages/dorms. NYRA also plans to install flowable fill concrete and replace wooden catwalks with concrete in the front of each individual stall. With the wood that is currently in the barns, the horses put holes in the floor, creating both a safety hazard and maintenance issue. Concrete catwalks will reduce the maintenance involved in barn upkeep and will increase the safety for the horses.

Exhibit B

2013 PROPOSED CAPITAL PROJECTS		2012	2013	2013			
	(in thousands)	Carryover	A Projects	B Projects	Safety	Money Saving	Revenue Producing
AQUEDUCT							
Track & Infield Maintenance/Upgrades:							
A	Turf Drainage	150			X	X	X
A	Replacement Rail Posts		100		X		
A	Retaining Wall		100		X		
	Infield Improvements	94					
Patron Area Improvements:							
A	First Floor Renovation		200				X
A	Replace Ceiling on 3rd Floor	60			X		
A	Concept drawings to modernize facility	30					X
B	Television Upgrades			100			X
A	Security Cameras		100		X		
B	Landscape Improvements			100			X
A	Perimeter Fencing		25		X		
A	Box Seat Area - Ceiling Abatement		250		X		
A	Replacement Signage		75				X
A	Signage for Marketing Initiatives		75				X
B	New Seating in Box Seat Area			75			X
A	Expansion Joints	150			X		
A	Manhattan Terrace Improvements	150					X
A	Infield Video Boards		1,000			X	
A	Gang Seating		200				X
B	Carrels			125			X
B	New Chairs			100			X
B	Apron Benches and Garbage Cans			50			X
A	Maintenance Capex		100				
Barn Area Construction/Upgrades:							
A	Dorm Renovation		250		X		
A	Barn Roofs & Ventilation		200		X		
A	Electrical upgrades		250		X		
B	Wall Board Replacement in Stalls			100	X		
A	Ice Building/Machine		60				
A	Mechanical Room Door Replacement		50		X		
B	Track Kitchen Upgrades			25			X
A	Maintenance Capex		100				
Other Front side Improvements:							
A	Install employee access control system	30			X		
A	Watch Guard Ring System		12		X		
B	Jockey Room TV Replacement			15			X
B	Chairs and Televisions in Film Theater			50			X
A	Upgrade the Employee Lunchroom	25					
A	Fire Regulation Renovations	30					
B	Aqueduct Air Conditioning			1,000			
Group Sales/ Dining							
A	Longshots Televisions		300				X
A	Longshots Construction		2,000				X
B	Equestris Televisions (67)			50			X
B	NYRA Rewards Customer Service Area			150			X
B	Store Replacing Champs Bar			20			X
TOTAL AQUEDUCT		$ 719	$ 5,447	$ 1,960			

Exhibit C

Capital Expenditures Tested

Sample	Year	Track	Capital Project	Capital Plan Category	Amount Spent in Sample Year
1	2014	Aqueduct	Aqueduct Mural Project	Patron Area Improvements	$ 58,915
2	2014	Aqueduct	Brooklyn Water Works	Patron Area Improvements	4,683,551
3	2014	Aqueduct	Aqueduct 1st Floor Renovations	Patron Area Improvements	181,740
4	2014	Belmont	Belmont Room Upgrades	Group Sales	200,724
5	2014	Saratoga	Saratoga Dorms	Barn Area Construction	523,203
6	2013	Aqueduct	Aqueduct Fire Extinguishers	Barn Area Construction / Upgrades	12,033
7	2013	Belmont	Widener Turf Expansion	Other Front Side Improvements	95,442
8	2013	Belmont	Veeder Replacement	Other Front Side Improvements	171,640
9	2013	Saratoga	Dorm 90 and 97 Renovation	Other Front Side Improvements	472,241
10	2012	Aqueduct	First Floor Bathroom Renovations	Other Projects	62,087
11	2012	Belmont	New Cottage Roofs (8,21,54) Belmont	Barn Improvements/ Cottage Roofs	318,787
12	2012	Saratoga	Saratoga Restaurant Furniture	Patron Area Improvements	105,868
13	2014	Saratoga	Announcement Booth for Spanish Race Caller	NYRA TV	2,764
14	2014	Belmont	Scan Tool	Fleet Equipment - Maintenance	5,178
15	2014	Aqueduct	Season Pass Printers	Parking and Admissions	3,600
16	2013	Belmont	Kubota Utility Vehicle	Fleet Equipment - Maintenance	19,460
17	2013	Belmont	Drain Cleaning Machine	Fleet Equipment	3,060
18	2013	Aqueduct	John Deere Gator (NYRA # 806)	Fleet Equipment - Cleaning	16,681
19	2012	Aqueduct	Headend Equipment	NYRA TV Equipment	10,869
20	2012	Belmont	Boom Truck - Belmont	Fleet Equipment	27,621
21	2014	Saratoga	Stall Flooring Barns (1, 2, and 52)	Barn Area Constructions	882
22	2013	Saratoga	Fusion Splicer	Other Front Side Improvements	17,345
23	2012	Aqueduct	Infield Upgrades	Patron Area Improvements	10,574
24	2012	Belmont	Winner's Circle Deck	Patron Area Improvements	29,822
25	2014	Belmont	Parking and Program Booths	Other Front Side Improvements	2,919
				Total	**$ 7,037,006**

Agency Comments

THE NEW YORK RACING ASSOCIATION, INC. P.O. Box 90, Jamaica, New York 11417-0090

(718) 641-4700
www.nyra.com

JOSEPH J. LAMBERT
SENIOR VICE PRESIDENT AND GENERAL COUNSEL AND CORPORATE SECRETARY

September 8, 2015

VIA EMAIL AND CERTIFIED MAIL

Ryan Wendolowski and Keith Dickter
Office of the New York State Comptroller
110 State Street
Albany, New York 12236

Re: Audit Report 2014-S-54

Dear Mr. Wendolowski and Mr. Dickter:

The New York Racing Association, Inc. (NYRA) has reviewed the Office of the State Comptroller's (OSC) Preliminary Audit Report 2014-S-54. The stated purpose of the report was to "determine whether the New York Racing Association, Inc. received the appropriate amount of Video Lottery Terminal (VLT) revenues for its capital program as stipulated by statute, and whether NYRA officials used these monies appropriately" for the period January 1, 2012 through June 30, 2014. (Report 201-S-54, p. 1).

NYRA agrees with OSC's core conclusion that *NYRA has adequate controls in place with respect to the receipt and spending of its VLT funds.* NYRA rejects the OSC's conclusion that NYRA lacks an adequate short- and long-term capital planning function, and we note that our plans have been approved by the NYS Franchise Oversight Board (FOB), the competent authority to do so under New York Law. NYRA rejects the OSC's suggestion that NYRA is responsible for delays and cost over-runs relative to the Longshots project. This project was managed by Resorts World not NYRA.

* Comment 1

Finally, NYRA has worked closely with the OSC during the course of this audit; NYRA has been responsive to all requests for information, documentation, and explanations. NYRA's Chief Executive Officer, the finance department, law department and all of NYRA management have made themselves available to collaborate with the OSC as requested. In the spirit of transparency, NYRA has worked in good faith and in full partnership with the OSC to conduct and complete the audit in a professional and complete way.

With regard to the OSC's findings and recommendations, NYRA would respond in detail as follows:

OSC FINDINGS

OSC Finding 1: OSC found adequate controls over the VLT revenues collected by Resorts and the transfer of such funds to NYRA.

Aqueduct Belmont Park Saratoga

*See State Comptroller's Comments, page 22.

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NYRA Response

NYRA agrees with OSC's important conclusion that NYRA's controls over the collection and distribution of VLT revenues have no significant deficiencies.

OSC Finding 2: NYRA officials lacked an adequate capital planning function. NYRA officials had not developed a long-term (multi-year) capital plan, and NYRA's annual plans lacked pertinent details, such as completion dates, the project to be financed, and support for their associated costs.

NYRA Response

NYRA's short-term planning is rigorous and ongoing, developed by management, approved by the Reorganization Board, and overseen by the FOB, the competent authority to do so under New York State law. The FOB reviews NYRA's VLT capital spending each quarter. NYRA has developed *and executed* a large number of new capital expenditure strategies to enhance the guest experience, improve conditions in the backstretch, promote safe, enjoyable horse racing and otherwise meet the objectives of the Reorganization effort on all three racetracks.

* Comment 2

Regarding long-term planning, NYRA has been, and is currently, engaged in significant long-term planning for Saratoga, a large and important undertaking. In 2012, NYRA began master development planning at Saratoga which included studies and plans, including existing condition surveys, development of a master plan, and SEQRA historical studies. Between 2011 and 2015, NYRA conducted a number of public meetings and met with all relevant stakeholders. The SEQRA process is expected to be completed this year, upon which the first of many construction projects will commence. Moreover, in 2013, the Board established a Long-Term Planning Committee which has been active in other long-term planning.

NYRA will work with the Board and Franchise Oversight Board to develop a new five-year capital plan, which is statutorily required by October 28, 2016.

* Comment 3

OSC Finding 3: Several of the actual capital projects initiated and/or completed by NYRA during the audit period were not in any of its annual plans, and several of the projects were not initiated.

NYRA Response

As OSC noted, all 25 NYRA capital expenditures for projects and equipment selected by OSC for sampling had been completed or received by NYRA. As to OSC's finding that disparities exist between annual plans and actual projects, NYRA faces delays regarding a variety of issues, all of which may require shifting timelines and corresponding shifts in labor and financial resources. As the OSC itself notes in its report, "capital program plans should have the flexibility to address situations, including those impacting the health and safety of NYRA staff and patrons." (Report 201-S-54, p. 7).

* Comment 4

In an effort to maintain complete transparency, any material deviation from the original budget which requires a reallocation of resources or carryover is reviewed and approved in detail by the Finance

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Committee of the Board on a quarterly basis. Furthermore, NYRA will continue to refine its project management systems consistent with best practices.

OSC Finding 4: As a result of inadequate project planning, NYRA could be obligated to pay $2.3 million dollars more for a project than was originally anticipated.

NYRA Response

With respect to the Longshots project at Aqueduct to which OSC refers, NYRA respectfully points out this project was, per contract, managed by Resorts World NYC. NYRA's role was limited to the appointment of an owner's representative to monitor Resorts World's progress and NYRA had no ability to otherwise direct the project.

* Comment 5

OSC Finding 5: In addition, for part of the audit period, NYRA charged capital programs funds for routine maintenance costs.

NYRA Response

As the OSC notes, the Franchise Agreement clearly provides that NYRA should use the VLT revenues it receives for its capital program for *maintaining and upgrading its racetrack facilities*. The OSC also acknowledges that NYRA has "considerable discretion in how they use these monies." (Report 2014-S-54, p. 10). As to the loan repayment, referring to the loan to NYRA under a 2010 agreement between NYRA and the Empire State Development Corporation, these payments were made directly by Resorts World pursuant to explicit statutory and regulatory direction by withholdings from NYRA VLT capital funds. OSC has acknowledged that NYRA's use of these capital funds do not violate the Franchise Agreement.

* Comment 6

OSC RECOMMENDATIONS

OSC Recommendation #1: Develop long-term (multi-year) capital plans that outline how available capital program monies will be used to promote NYRA's long-term capital program goals and operational goals (e.g., enhanced safety, attraction of additional customers).

NYRA refers the OSC to its response to findings item 2 above.

OSC Recommendation #2: Develop annual capital plans that detail each project's need/justification, timeframe for completion, and project cost estimates.

NYRA refers the OSC to its responses above.

OSC Recommendation #3: Develop and implement a formal project management system to effectively monitor the status of projects in long-term and annual capital plans.

NYRA refers the OSC to its responses above.

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NYRA has a formal project management system and detailed policies and procedures for fixed assets. In order to initiate a capital purchase or project, NYRA requires the completion of a "Capital Project Request." This form provides details of the project, responsible party, estimated cost and other pertinent information. Each capital project has its own budget and project file and is assigned a unique project code for purposes of tracking labor and material expenses. The project codes are created in NYRA's accounting and purchasing systems to ensure that all purchases are visible and recorded properly. An internal system called "E-Time" (a hand scanning system maintained by the payroll department) is used to track employee labor hours/costs. The Facilities department manages the status of all capital projects and monitors weekly payroll in E-Time and other expenses.

* Comment 7

Nevertheless, NYRA continues to refine the system and adopt best practices.

OSC Recommendation #4: Minimize the extent to which VLT capital revenues are used for non-capital (operational) purposes.

NYRA refers the OSC to the responses above. As the OSC acknowledges, NYRA's use of the VLT capital funds are in compliance with the Franchise Oversight Agreement and does not present any issues of concern around NYRA's financial reporting.

NYRA will continue to work collaboratively with the OSC to obtain the best result for the horseracing industry and the people of New York State.

Best regards,

Joseph J. Lambert
Senior Vice President, Chief Administrative
Officer and General Counsel

JJL:td

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State Comptroller's Comments

1. Our report concluded that NYRA had adequate controls over the receipt of VLT revenues collected by Resorts and the transfer of such funds to NYRA. Our report did not, however, conclude that NYRA had adequate controls over the spending of VLT funds. Further, as detailed in the report, there were weaknesses in NYRA's short- and long-term capital plans funded by VLT revenues.
2. We note that NYRA refers to "short-term planning" as opposed to "capital planning." Also, we acknowledge that the Reorganization Board approved NYRA's plans. The fact remains, however, that there were material deficiencies in NYRA's capital plans, as detailed extensively on pages 6 – 9 in our report.
3. We commend officials for indicating that NYRA will develop a new five-year capital plan by October 28, 2016, as statutorily required. However, we also encourage officials to develop an effective long-term plan considerably sooner than October 2016, to derive the benefit of such planning more timely.
4. We acknowledge that management needs flexibility in capital plan implementation to address unforeseen problems that could impact the health and safety of patrons and staff. Nevertheless, NYRA officials did not provide us with documentation to explain the differences between the projects listed on capital plans and the projects actually undertaken. As detailed in the report, NYRA undertook several significant projects that were not on capital plans, while projects on such plans were not initiated.
5. We acknowledge that Resorts World NYC was primarily responsible for the management of the Longshots project. However, given NYRA's liability for costs exceeding $5 million, NYRA officials should have taken a more active role in project planning and monitoring to help minimize overruns and NYRA's related fiscal obligations. As noted in the report, change orders alone totaled $2.3 million (adding about 32 percent to the project's original expected cost of $7.1 million). Given the proportion of change order costs to the project's total costs, there is significant risk that unnecessary costs were incurred.
6. We did not question NYRA's legal authority to spend VLT revenues on maintenance activities that are normally funded through general operations allocations. Nevertheless, the funding in question is intended primarily for capital projects that will add long-term value to NYRA facilities. Consequently, the use of such funding for routine maintenance should be minimized.
7. The system in question did not track the status of projects in relation to NYRA's capital plans. As previously noted, NYRA initiated projects that were not on the capital plans while certain projects that were on the plans had not yet been started. Further, although data from Capital Project Request forms was posted to the system, pertinent project status information (such percentage and date of anticipated completion) was not included.