

WBAI Treasurer's Report
March 14, 2018

The National Finance Committee (NFC) met on January 23, February 13, February 27, and March 13, 2018. The local Finance Committee attempted to meet on February 22, 2018, but failed to achieve quorum.

At the January 23, 2018, NFC meeting there was a motion brought up regarding the repayment of debts within Pacifica. The motion ended up being postponed to the next NFC meeting.

The CFO did not attend this meeting, but he sent a report. The CFO's report said that the National Office is short of Staff which might be needed to comply with the California Attorney General's Office's deadline for the FY16 audit. Also, after the retirement plan compliance services provider resigned a new compliance services provider and a new trustee for the retirement plan is needed .

The committee was told that the new interim Executive Director, Tom Livingston, started work on January 23.

At the February 13, 2018, NFC the CFO reported that the work on the FY16 audit had begun two weeks earlier. He said that WBAI, WPFW, the National Office, the Pacifica Radio Archives and KPFT were ready to start preparing their audits, but KPFA and KPFK had not been able to get their information together for the auditors yet, and that a full consolidation couldn't be done yet. He said that work on the FY16 audit and the audits for the retirement plan and the 403(b) plan were being worked on. He said that the National Office will have to hire a lawyer to deal with some of the details of the pension funds because the collective bargaining agreements are not consistent with the retirement plan documents.

The CFO said that regarding the Empire State Realty Trust (ESRT) judgement, the PNB needs to get a loan. He said that trends were not encouraging with the amount of late fees and interest that are accruing.

The CFO said that he had done the tentative WBAI FY18 budget, and had sent it out. He said he was accruing the monthly Empire State Building tower rental at the "usual \$60,000 per month rate" but he got a calculation from the ESRT with late fees and interest and he didn't know how to account for that, and he said that if it's an accrued amount it's pretty bad.

During the meeting I pointed out that what the CFO had sent was a projected cash flow for WBAI in FY18, and not a real budget. the CFO said that he didn't want to put out a WBAI budget that showed such a huge year end deficit, which he projected would be \$569,571.70.

The more than \$600,000 in unpaid Central Services fees from all of Pacifica are an impediment to the National Office being able to hire people to get work done.

The NFC passed the following:

Motion: (Bill Crosier) "The NFC recommends to the PNB that they ask the interim Executive Director and CFO to produce a short plan, with appendices if needed, within 3 weeks, for how Pacifica can significantly increase revenue, decrease expenses, and

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increase listeners, with the goal of becoming and staying current with all financial obligations before the end of FY2018, and paying off Pacifica's debt within a few years." (Passed 5 for, 0 against, 1 abstention)

At this meeting the motion regarding the repayment of debts within Pacifica which had been brought up at the previous meeting was defeated.

The local Finance Committee meeting scheduled for February 22, 2018, failed to achieve quorum and so was cancelled. The WBAI General Manager did not show up for this meeting. I was told that he did not come to WBAI at all on that date. The General Manager had said he would attend the meeting, and had approved the date when it had been set at the previous meeting. The General Manager has a history of telling the local Finance Committee that he'll attend the meetings and then not showing up. It does not motivate the committee members to show up when they know that they can't count on the General Manager's promise to attend meetings.

Two days after the local Finance Committee meeting the General Manager sent an E-mail saying, "Sorry for the sudden unavailability." The full General Manager's report is in the appendix of this Treasurer's Report (Appendix A). The General Manager said that as of February 24, 2018, WBAI had \$80,000 cash in bank. I will address the topic of the recently concluded WBAI 2018 Winter 'thon later in this report.

There are a number of statements from the General Manager in his report which I need to address.

- The General Manager says, "More people listen to WBAI on the internet than (sic) thru regular radio." I don't know how he can say that. WBAI does not subscribe to the Arbitron ratings and hasn't gotten them for quite a few years. Unauthorized use of the Arbitron ratings service is a criminal offense. If, however, WBAI really does have more listeners on-line than over the air this would be a serious condemnation of how the radio station is being run.
- When the General Manager says, "We are working with various producers on getting progressive sponsors of their shows," I have to wonder if this plan has been run by the FCC and other lawyers that Pacifica uses to make sure that it's legal. As far as I know the Pacifica Foundation has not announced that it is accepting underwriting or sponsorships for programming, and I have seen no guidelines for such things published within Pacifica. I hope that we can find out what the proposed details about this are. WBAI has to comply with Pacifica Foundation policy, FCC rules, IRS rules, federal laws regarding not-for-profit enterprises and California and New York State laws regarding not-for-profit enterprises.
- The General Manager said, "We received an extensive report from Yellow Magnet that was shared with the interim Executive Director. I will send it to RPaul to share here." The General Manager sent me a forwarded E-mail that claimed to have an attachment that was the "final report" from the Yellow Magnet company about what WBAI had gotten for the \$50,000 it had paid that company last year. Unfortunately, there was no attachment

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included in the E-mail that the General Manager had forwarded to me. I have asked him more than once to please send me the actual attachment, as the local Finance Committee especially has been interested in the Yellow Magnet topic since last Summer. So far the General Manager has not replied to my request.

At the February 27, 2018, NFC meeting new members were to be seated. The NFC was informed of the new members the day before the meeting, and some of them couldn't attend the meeting on such short notice. The NFC barely made quorum for that meeting and put off electing the committee officers until the next meeting. The CFO did not attend this meeting.

At the March 13, 2018, NFC meeting the committee officers were elected. Director Joseph Davis from KPFT was elected Chair and I was elected Secretary. The NFC passed the following **Motion**: "To meet next on April 10, 2018, and then to meet on the second Tuesday of each month until the PNB work load requires adding a fourth Tuesday meeting, for the next 12 months."

The CFO summarized the report he'd sent out on March 9, 2018. That report is in the appendix of this Treasurer's Report (Appendix B). **Note**: although the written CFO's Report says at the top, "**FOR INTERNAL USE ONLY. NOT FOR PUBLIC DISTRIBUTION**," the CFO agreed after an E-mail exchange that it was all right to post his report, saying that there was no closed session material in the report and that he could, "say these things in an OPEN Session in a finance committee meeting."

The really good news is that the California Attorney General's Office has agreed to extend the deadline for Pacifica to get the FY16 audit posted to June 19, 2018. Had the deadline not been extended Pacifica would have been liable to having its not-for-profit status revoked, which would have meant that Pacifica would no longer be tax-exempt. That would have caused serious, and possibly permanent, damage to Pacifica. The CFO seems confident that this deadline can be met, even though there are what he called many bottlenecks which are slowing down completion of the audits.

The CFO said that the FY16 audit will be about 500 days late, and that it would be very expensive due to the Empire State Realty Trust settlement and payments and the retirement plan audits for FY15 and FY16 plus the audit for the 403(b) plan. There is also a problem with the KPFK arbitration and its non-compliance with the retirement plan. He said that Pacifica has hired a lawyer to help resolve some of the KPFK issues.

The CFO said that he was concerned about the long term loans that are reportedly being sought for Pacifica by Mark Hand. The CFO said that he has never seen a lender accept an audit that was as late as Pacifica's are. The implication is that if a long term lender is found they may not want to lend Pacifica millions of dollars based on Pacifica's out of date audits and inability to generate audits in a timely manner.

The CFO said that the audits would probably cost about \$500,000.

Pacifica uses accounting software called Microsoft Dynamics GP, which is still referred to in Pacifica by its former name of Great Plains. The PNB authorized \$50,000 to update Pacifica's ancient version of the Great Plains software a couple of years ago, but the money

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wasn't there. The CFO reported that six months ago Pacifica signed a contract to get the software updated. Pacifica has paid \$20,000 to get the update started and will need to pay another \$25,000 to complete it, but the new problem is that the update requires testing of the software at the National Office and the training of National Office personnel. This all requires the physical presence of the National Office Staff for the testing and training for two weeks, and with the current workload the National Office can't spare that much time. Using old software has an effect on getting the audits done because new hires are not familiar with software that old.

The WBAI 2018 Winter 'thon ran for 34 days, between February 5, and March 11, 2018, with March 8, a non-pitching special day for International Women's Day. The last two days are missing from the daily tallies posted by Management, so the total tally I've seen is \$282,897 which comes out to a daily tally of \$8,841. This is much lower than Management's projections of a total tally of \$450,000 after 30 days of pitching at \$15,000 a day.

The next NFC meeting will be on April 10, 2018. I have to poll the local Finance Committee for when people can make a meeting. Before I poll the committee I need the General Manager to say when he will actually show up for a meeting. I have given the General Manager a choice of four dates on the Wednesdays he says he can attend. I have not heard back from the General Manager on what specific dates he can make.

At the October LSB meeting the General Manager said that the Art Auction would bring in \$100,000. I have been asking him for an accounting of the net revenue and expenses for the Art Auction for months. I have still not been able to hear *from the General Manager directly* regarding the net revenue and expenses. As mentioned above, I am trying to get the General Manager to send me the "final report" on the Yellow Magnet contract.

WBAI's finances continue to deteriorate. Pacifica is facing a huge set of expenses. I am told that the final decision by a referee regarding the ESRT claims has been postponed until the end of March. If the referee gives the ESRT what they want the bill could be \$2,500,000 or more. The crucial audits will cost a great deal more money. No one has notified the NFC of any plan to pay back the loans that were secured to pay off the ESRT judgement, and I do not think that Pacifica's current cash flow will be able to pay the loan off. While it's wonderful that Pacific has gotten an extension on its FY16 audit, the money problems are getting worse. Pacifica has been living on borrowed time, and plans to live on borrowed money. I am hoping that Pacifica can survive, and that WBAI can survive. I think that some drastic action will need to occur in the future in order for both Pacifica and WBAI to survive.

R. Paul Martin
WBAI LSB Treasurer

APPENDICES

Appendix A WBAI General Manager's report dated February 24, 2018.

Dear all,

Sorry for the sudden unavailability. Here is my report:

1. We have \$80,000.00 in the bank - \$48,000.00 or \$60,000.00 of which I hope to keep in escrow for the ESRT (5 months).
 2. We are averaging about \$9,000.00 per day. We picked up this week a bit. We will extend the drive 1 more week as was planned if we were not making close to \$15,000.00 per day. Our goal was \$15K *30 days for \$450,000.00 - that would have put us in a more comfortable position.
 3. I discovered that a house in Piscataway, NJ was donated to Pacifica. The house maybe worth \$400,000.00 with liens of \$60,000.00. I am trying to figure out why this is not credited to WBAI since Piscataway NJ is in our listening area. WBAI does not exist as a legal entity and therefore, could never receive such a donation but the donation is to Pacifica "usually on behalf of WBAI." Keep you posted.
 4. We have been sending lots of premiums and the number of complaints has diminished considerably.
 5. I have been working rather well with the part time business manager in LA, Barry Brooks. It is not the best system but basically, he calls me when he can't identify a vendor or a transaction. For example, we bought a comrex from B& H or BSW for close to \$2,000.00. He will call me and go over these transactions and I usually E-mail him the info after giving him the info over the phone. Of course, I load all these transactions and receipts in quickbooks as PDF files which is starting to make our lives much easier.
 6. Tony Bates took the initiative to contact social media people and now when people go online to say : tunein radio, there is a 30 second ad and WBAI gets a portion of that. More people listen to WBAI on the internet than thru regular radio. We are finalizing the paperwork so that Apple apps iTunes can also generate money.
 7. We are working with various producers on getting progressive sponsors of their shows.
 8. I am working with Ama on producing more events - small and big - example - Senator Nina Turner in March
 9. I have no idea what is going on with the budget
 10. Preliminary audit files were completed way in advance by WBAI - 24 or 48 hour turaround. However, we are still waiting on KPFK and KPFA
 11. We received an extensive report from Yellow Magnet that was shared with the interim Executive Director.. I will send it to RPaul to share here.
- Berthold

Appendix B CFO's report dated March 9, 2018.

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March 9, 2018

Dear PNB Members,

Sub: CFO Report

Following is an update on important matters:

1. FY 2016 Financial statements audit

- a. The deadline for submission of audited statements was Feb. 14, 2018. We have applied for extension until May 31, 2018 but have not received so far.
- b. We have received a Restricted Grant in the amount of \$56,000 from Jim Krivo's estate for FY 2016 Audit. It is same as the Grant for FY 2015 and worked very well. We are now covered for FY 16 audit expenses.
- c. The audit itself has picked up speed now. We have recently provided Consolidated Financial statements which is usually the starting point for the audit. It was held up until now as KPFA had been late in submission of its statements and numbers of corrections had to be made in KPFA statements. We have been providing information for other stations which have been audit ready.
- d. We had brought in WBAI statements to the National Office to prepare audit schedules. Most of the work has been done but necessary adjustments will have to be made for Empire State rents, late fees etc. All the information will be needed, at some point, if there is a settlement and loans obtained to pay off the dues. In the meantime, we have forwarded Auditors request for additional information and supporting documentation and station is gathering the requested items.
- e. WPFW arranged for an outside firm to help prepare some information. The rest was handled by the National Office. KPFT and PRA are able to handle their information needs in a timely manner.
- f. Audit will be quite extensive this time as it will cover extraordinary matters like Empire State judgement and settlement, loan documentation, Retirement Plan deficiencies etc. and will require independent confirmations and disclosures.
- g. I repeat my comments from earlier reports that stations must hire accounting staff to manage their process. This is very necessary for WBAI and WPFW who do not have Business Managers and pose extraordinary burden on the National office. Even KPFA and KPFT need additional resources to manage extra demand during audit. It takes abnormal amount of time to get information from stations and is a serious bottleneck in completing the audits in a timely manner. As stations do not prepare Balance Sheets on a monthly basis, they are not experienced in complex accounting or reconciliations which is taken up only at the time of audits, delaying it further.
- h. It will take several weeks, but when I would receive preliminary observations on accounting issues or internal controls from the Auditors, I will write a separate letter to the Board.

2. Hiring of ERISA Attorneys

- a. We have retained Trucker Huss as our ERISA attorneys to resolve Retirement Plan matters. There are several issues that are holding up the Retirement Plan audits, hiring of Third Party Administrators and depositing contributions in employee's accounts. All stations have contributed towards meeting the attorney's fees and costs. The Attorneys will perform the following tasks on an urgent basis along with National office support:

- i. Finding a Third Party Administrator to replace Newport Group who had resigned a few months back and help in transferring the data and other information
 - ii. Assisting Retirement Plan Auditors with their questions for completing the audits
 - iii. Helping labor attorney negotiate with KPFK Union to amend the Arbitration award
 - iv. Helping National office with funding formula to calculate Retirement contributions as per agreed upon rules
 - v. Assisting in developing a process roadmap for making corrections in Collective Bargaining Agreements and depositing money in employee's accounts
- b. I will write a separate letter to describe the various options and steps being taken to resolve the issues. This is quite a detailed and complicated subject and merits separate attention.

3. FY 2015 & 2016 Retirement Plan Audit

- a. FY 2015 and 2016 Retirement Plan Audits are both pending at this time. There are several complex matters to be resolved before the audits can be completed. The hiring of ERISA attorneys had become necessary to resolve such matters.
- b. With the help of ERISA attorneys we are trying to determine our legal obligation to pay back dues. We are finding out that some stations do not have Collective Bargaining Agreements or the language is not clear so we may not have the legal obligation. However, we may have made many assurances in the past or our financial statements may indicate that we owe these amounts. Toni Jaramilla, our labor attorney also believes that we should pay to all employees for all stations to avoid any protracted litigation.
- c. Determination in clause (b) above, will also determine our liability to accrue in the financial statements. This information is needed both by the Retirement Plan Auditor and the Financial statements auditor for completing FY 16 audit.
- d. We will need a payment plan how we will satisfy the outstanding dues. ERISA attorneys are suggesting strongly to have ready source of cash before we commit to a payment plan. A mere receivable on the books will not be sufficient and will not avoid penalties. For now, it is estimated that approximately \$750,000 should be set aside to meet all obligations.
- e. We will need a resolution of KPFK Arbitration award. A qualification statement will be added to the statements notifying of such event.
- f. Audit testing is not complete as of now, as our Third Party administrators resigned and some documentation was needed.
- g. In any case, FY 2015 Audit has to be completed first before FY 2016 audit can be done. Auditors are aware of the urgency and have committed to do their best.

4. FY 2016 403(b) Audit

- a. FY 16 403(b) Audit is almost complete except for one outstanding issue. KPFK Arbitration Award directed

Retirement Plan money to 403(b) plan. These are two distinct plans and this directive will be in violation of qualified plan rules.

b. Retirement Plan Auditors and ERISA attorneys have discussed this issue and are in favor that we should not affect our 403(b) plan in any way. To quote the Attorneys directly – “ With regard to depositing the Retirement Plan contributions into the 403(b) plan (and putting nothing into the Retirement Plan), this would be a failure to operate the Retirement Plan in accordance with its terms which is a qualification failure under Internal Revenue Code Section 401(a) and a breach of fiduciary duty under ERISA Code Section 401(a)(1)(D).”

c. We will try to complete the audit with a qualifying note and will try to amend the Arbitration award separately. We will pursue other options if the Union will not be agreeable to amending the award. This is under works and will take at least a few weeks to complete.

d. I will provide the draft statements to the Audit Committee as soon as they are ready and then those can be considered for approval.

e. Still, we will not be able to file the statutory return Form 5500 until a Third Party Administrator is hired. This return is seriously delinquent and will attract penalties.

5. Great Plains Upgrade

a. The upgrade project is going at a slow pace as both the IT staff and our internal accounting staff is busy and not able to give sufficient time. However, IT consultants are making progress. They are testing our IT servers and infrastructure and resolving issues / removing bugs as necessary.

b. As you would recall, we are operating on almost a 15 years old version. We do not have a license and there is no maintenance contract. The system can crash without warning, which may prove extremely detrimental. All our accounting operations will come to a halt, if this may happen.

c. IT Consultants will need 1-2 weeks of our accounting staff's time during the upgrade, testing and training. As we are extremely busy in FY 16 Audit, it is becoming difficult to spare time. However, as this project is quite critical, we will work with the Consultants to spare a day or two (if possible), to keep the project moving and find a block of time when we can do the actual implementation.

6. National Office Finances and Staffing

a. Both WPFW and KPFT have been paying Central services consistently for last several months. This is in addition to KPFA and KPFK who had been regular for last two years. This has improved National Office finances and we have been able to clear several outstanding bills. WBAI has still not been able to make payments for last several months.

b. Our HR Specialist had resigned in January this year for family reasons. In the last few days, we have hired a temporary staff to take care of HR paperwork and other matters. These are employee related issues and time sensitive, so cannot wait for long.

- c. We are still actively looking to hire a Contractor in a Senior Accountant role, but have had no luck so far. We have reviewed at least two dozen Resumes and conducted a few interviews but did not find the right skills. It is extremely hard to find a suitable candidate with advanced accounting knowledge.
- d. In the meantime, we have increased the hours of temporary staff who had been working with us on and off and know our system and process. This is helping a great lot as they can handle routine administrative work while more experienced staff can handle the accounting and auditing work.

7. Audit delinquencies and Due dates

- a. Refer to Annexure which shows various Audit delinquencies and due dates for upcoming audits. We have just started FY 2016 Financial Statements audit when FY 2017 audit is already due. We have also not been able to complete FY 2015 & 2016 Retirement Plan Audit for reasons explained in Section 3 of this report. This has prevented us in meeting statutory compliance requirements for filing Form 5500 for past years and will attract serious penalties. Filings for subsequent years will also be late. These are serious violations of compliance requirements.
- b. There is a whole series of audits both for FY 2016 and FY 2017 which are now late or seriously delinquent. I had earlier submitted a budget, a copy of which is attached, for reference, to bring all our audits current by March 2019. The scope of work is quite clear with a quick glance at this list. However, to date, I have not received any response or interest. We cannot file for CPB funding, even in 2019, if our audits are not current

8. Sale of National office / Nakapon building and relocation

- a. As per PNB authorization, National Office / Nakapon building has been put up for sale. We have not seen any budget for relocation or time-table when we have to relocate. We also do not have an alternate place. Needless to say that a relocation will cause a major disruption in our operations. As is clear from the backlog and the schedule of due dates, next 7-8 months are jam packed with critical deadlines. As such, we do not anticipate to meet these deadlines, unless massive resources are devoted, but there is also no room for major dislocation. Computer servers, which are housed at the National office will also have to be relocated and require planning and proper space.
- b. Whether we lease the same building back from the buyers or rent another space, we do not have the money to pay the rents. Central services cover just the cost of basic operations and are also not paid regularly. So far, no additional source has been identified to cover the rents and we run a real risk of being homeless.
 - c. National office also keeps financial records and other material for the Foundation for last 10-15 years. These are not properly labeled or boxed, but are stored in racks and drawers, dozens of them. Nakapon building (which is separate than the National office) is full of boxes of financial records. No policy has been formulated for records retention. This task alone is going to take several weeks or months to sort

the materials and box them properly. As present National Office is a big tall building and has vast storage space, it will be difficult to find an alternate place for the same size and a separate storage place will be necessary. This will add to the rental cost.

9. ESRT Settlement, Loans and Other related matters:

a. I am not involved with ESRT settlement, obtaining loans and similar other related matters. Marc Hand from Public Media Company and a few Directors are involved in this process. So, it is difficult for me to comment on specifics of these matters. However, I have cautioned the Board on multiple occasions and do so again, that business conditions, as they exist now, will trigger loan default. Audit delinquencies, non-payment of Pension obligations, no repayment plan for loans and multiple other challenges that I have described in my report, will, either individually or in combination, create a default condition. This will be devastating for the Foundation. I will write a separate and specific letter to the Board describing these conditions more in detail.

Thanks for your time.

Sam Agarwal
Chief Financial
Officer Pacifica
Foundation

Attachments:

- a. Email and budget to bring all our audits current
- b. Due Dates and Audit delinquencies

Copy:

Tom Livingston, Interim Executive Director National
Finance Committee Audit Committee General
Managers, Business Managers of all stations Local
Station Boards Ford Greene, General Legal Counsel