

Summary of 9-21-12 interview of Michael Harris

Interview and summary by Thomas M. Patton, Deputy Attorney General

Work History and Background

Michael Harris has worked approximately 24 years for the State of California. He started as a fiscal and program analyst at the Legislative Analyst's Office (LAO) in 1987 or 1988. Harris reports that Proposition 140 in 1991 caused the LAO to reduce the number of analysts from about 90 to 25, and he then moved to the recycling division at the Department of Conservation. Harris ran a beverage container recycling statistical analysis unit at Conservation until 1997. He then served three years as a consultant to the Senate Budget and Fiscal Review Committee, where he reviewed all Natural Resources Agency department budgets, including Parks and Recreation. (Michael Harris 9-21-12 interview transcript (MHtr), pp. 3, 7, 8-13.)

In 2000 Harris moved to the Department of Fish and Game as chief of administrative services. In November 2003, then-director Ruth Coleman appointed Harris deputy director of administrative services at the Department of Parks and Recreation. Harris oversaw the administrative services division at Parks for slightly less than two years. In July 2005 Harris went on leave, and returned to the Department on January 31, 2006, as deputy director of policy and strategic planning.¹ In June 2008, then-chief deputy director Paul Romero retired, and Harris "became eventually acting chief deputy director." Harris served as "acting" chief deputy director from the latter half of 2008 to July 2012, and was never formally appointed to the position. (MHtr, pp. 14-16.) Harris was relieved of his duties at the Parks Department in July 2012 after the existence of undisclosed funds was revealed. He is now working at the California Department of Environmental Protection.

Harris stated he has an undergraduate degree in environmental studies and economics, and reported he also completed two years of work towards a Ph.D. in agricultural and resource economics. (MHtr, p. 4.)

¹ Former assistant deputy director of administrative services Rob Boriskin served at Parks from February 2005 to April 2006. Boriskin stated that he "sort of" served as acting deputy director of administrative services after Harris went on leave in July 2005. (Rob Boriskin 9-13-12 interview transcript, pp. 13-14.) Department records indicate that Keith Demetrak (deceased) subsequently served as acting deputy director of administrative services from January 2006 to March 2007.

Harris explained that LAO analysts review the Governor's budget and related information received from the Department of Finance (DOF), and prepare analyses for legislators' use at budget hearings. Harris stated he and Ruth Coleman became friends while both worked at the LAO. He reported Coleman was also a fiscal and program analyst who started with the LAO some six months before Harris arrived in late 1987. The two stayed in contact over the years, and when Harris went to work for the Senate, Coleman was working as legislative director for Senator Mike Thompson, then-chair of the senate budget committee. (MHtr, pp. 6-9, and 17.)

Harris recalled he had previously worked with Becky Brown when he was part of the Senate budget committee staff and she was the Parks Department's budget officer. Harris stated that he was later serving as chief of administration services at Parks when Brown retired, and that he interviewed and ultimately hired Manuel Lopez to replace Brown. (MHtr, pp. 17-18.)

Discrepancies in Balance Reports for the State Parks and Recreation Fund

1. Discovery and discussions; interview conversation part one

Harris acknowledged he has read news reports about discrepancies in the balances reported by the Parks Department to the State Controller's Office (SCO) and the DOF regarding the State Parks and Recreation Fund (SPRF). He was then asked when he first became aware of the discrepancy and what his thoughts were. (MHtr, p. 19.)

Harris stated that shortly after becoming head of administrative services in 2003 or 2004, his recollection was he received a joint briefing from then-budget officer Becky Brown, and from Harris's next in command, then-assistant deputy director of administrative services Tom Domich. Harris stated: "they told me that there had been an error made in the fund condition for SPRF." Harris recalled being advised the error occurred in 1999. Harris also stated he could not recall whether he was told the error was made by the DOF or by the Parks Department, but the net effect of the error was to understate the SPRF fund condition balance reported to the DOF relative to the cash balance reported to the SCO. Harris stated his recollection was the discrepancy was about \$15 million dollars when it was first reported to him. (MHtr, pp. 20-21.)

2. Rationale and decision not to disclose SPRF funds to the Department of Finance

Harris also recalled being told "the department had chosen" not to correct the error for a number of reasons. One reason was the "widely held belief" that if they did so, the result would

be a reduction in the Department's general fund appropriation to offset the unreported monies. The other reason was it was recognized that the Department was fiscally at risk due to its increasing reliance on revenue earned in the SPRF. (MHtr, pp. 21-22.)

Harris recalled that historically, going back to 1997, the Department had experienced a \$15 million dollar deficit as a result of what Harris called a perfect storm--a series of storms and a cold spring resulting in reduced attendance and the closure of several damaged parks. Harris stated that, as presented to him, there was concern about becoming increasingly dependent on SPRF revenue over general fund monies because SPRF revenues are volatile. He was further informed the belief was that the amount unreported to the DOF would be absorbed as spendable cash even though such revenue was not coming in. It was also expected that at some point revenues would fall short of projections, and absent the cash surplus another deficiency would occur. (MHtr, pp. 22-23.)

When asked if the people reporting the fund reporting discrepancy to him were Brown and Domich, Harris stated he did not have a "direct recollection," but did not know who else would have told him. When asked who was identified as the Parks management that decided not to rectify the discrepancy, Harris stated: "I don't recall discussing that." Harris then recalled that Coleman became director in 2002, succeeding Rusty Areias, under whom she had served as deputy director for legislative matters. When specifically asked if he had been told it was Coleman who made the decision not to rectify the discrepancy, Harris stated it certainly wouldn't have been Coleman "because she wasn't Director at the time this occurred." (MHtr, pp. 23-25.)

Harris was next asked if he knew when the disparity was discovered. He stated that his recollection was 1999. This interviewer then observed that Harris had stated his staff had suggested that the error *occurred* around 1999, and not that it was *discovered* in 1999. Harris was also advised that this interviewer had information indicating the error was discovered later. Harris then offered 2000 as the year of discovery, while this interviewer observed the disparity was more likely identified in 2001 or 2002. In response, Harris offered that his recollection was the department was aware of the error from the time it was made. Harris then specifically recalled discussing the disparity with Becky Brown, who he indicated was the source of this knowledge. (MHtr, pp. 25-27.)

3. The plan for “rectifying” the disparity in reported SPRF fund balances

Harris then offered that it was important to note that the discussion of the disparity was done in the context of discussing a plan to rectify it. When asked to describe that plan, Harris explained there that there were two pieces: the first being the Department’s appropriation level and thus spending authority; the other being the availability of money. Harris advised it was expected there would come a time when revenues did not meet projections, thus the Department “would have an appropriation for which we did not have money.” Harris continued: “And at that point we would have an appropriation to spend the money. We would use the cash balance to spend up to the appropriation, even though we had not earned the projected revenue at that time. Is that making any sense?” (MHtr, pp. 27-29.)

This interviewer advised he understood the concept, and noted that because the unreported funds were not reflected in the fund condition statement and therefore not disclosed to the DOF, the Department would have to do something to increase the amount of money reflected as cash on hand. Harris responded: “That’s certainly logically consistent. I never got down to that level of detail.” (MHtr, pp. 29-30.)

Harris next pointed out that appropriations in the SPRF are made contingent on realizing projected revenue, and thus the issue is whether or not there are actual dollars to spend. He observed that weather and attendance variables determine if revenue reaches projected levels. He then gave as an example an appropriation to spend \$70 million but revenue only reaching \$60 million, and stated: “The plan was that, at some point if we face that – when we face that situation, we expected to face that situation, that we would make the necessary adjustments, I guess, but like I said, I didn’t get down into that level of detail in the budget to reflect the fact that that additional ten million of authority was actually there in cash.” (MHtr, pp. 31-32.)

It was then pointed out that some kind of “fiction” would be required in order to reflect monies not previously disclosed, whether it was newly disclosing monies previously unaccounted for, or perhaps claiming more revenues than actually received. Harris responded: “I’m not sure about fiction. I think it’s a correction of an error.” (MHtr, p. 33.)

Harris then asserted that with special funds like the SPRF there are always differences in fund condition amounts reflected in budget documents and SCO cash balance reports, in part because of differences between accrual and cash basis methods of accounting. (MHtr, p. 34.)

He next recounted discussing this plan for bringing monies in and correcting an “error,” with Brown and Domich during “what I assume was the briefing that Becky and Tom gave me.” When asked again if he recalled the three of them discussing how to “rectify” the matter, Harris replied: “In very general terms.” He also remarked it was not a matter of if the need arose, but when the need arose. (MHtr, p. 36.)

4. Discovery and discussions; interview conversation part two

Harris asserted that in his eight years at Parks he does not believe he spent more than 30 minutes total discussing the SPRF balance report discrepancy, and most of the discussion occurred when he was initially briefed on the issue. When asked if he did not think a \$15 million discrepancy was an issue deserving of more attention, Harris responded that since he didn’t do anything to change it, obviously he did not think it was terribly important. Harris was asked to confirm he had discussed the matter with Brown and Domich, and that no action was taken. Harris responded: “That’s correct.”² (MHtr, pp. 37-38.)

Harris then again sought to explain the issue as stemming from differences in methodologies used for budgeting versus cash accounting. This interviewer pointed out it was obviously brought to his attention as a \$15 million dollar disconnect between SCO and DOF balance reports, and not as a naturally-occurring difference due to accounting methodologies. Harris confirmed it was presented as a \$15 million dollar disconnect between reports and reiterated there was a plan of action to rectify the discrepancy over time. (MHtr, pp. 39-41.)

² On frequent occasion Harris suggested his recollections of being briefed about the discrepancy by Brown and Domich, and of discussing the topic with them or with others, were uncertain. Just as frequently, Harris dispensed with any pretense of an uncertain memory and specifically recounted discussing the matter with Brown and Domich and others. For instance he specifically recalled first learning about it when he was jointly briefed by Brown and Domich, specifically recalled Brown advising him how long the agency had known of the discrepancy, specifically recalled discussing the plan to “rectify” the discrepancy in balance reports, and specifically recalled being told by Brown and Domich “this is where we are” and that they had not presented it as something requiring action. (MHtr, pp. 20-21, 27, and 38.) It was evident Harris in fact recalls with significant clarity the conversations he has had about the discrepancy and with whom, and that he has been party to many and much more detailed discussions about the matter than he chose to reveal.

When this interviewer asserted the discrepancy was also brought to his attention by Lopez, Harris stated he did not recall explicitly discussing it with Lopez, but did recall that he and Lopez “sort of made a passing reference to it a couple times.” When asked if he ever discussed the \$15 million dollar discrepancy with Coleman, Harris stated: “Not that I recall.” (MHtr, p. 41.)

Harris then recalled having a “passing” conversation about the discrepancy with Aaron Robertson. Harris stated that Robertson told him a week or two before Harris was relieved of his CEA position (in July 2012) that there was a large discrepancy between the reported SPRF cash balance and the budget fund condition statement which could be as high as seventy million dollars. Harris stated he was shocked and the figure sounded too large, as he would have expected the actual discrepancy to be around \$15 million. (MHtr, p. 42.)

With regard to balance reports submitted to the SCO and DOF for the Off-Highway Vehicle fund, Harris stated he never had any similar conversations about a disparity in those fund reports and had no idea what that was about. (MHtr, p. 43.)

5. Department of Finance and Legislative Analyst’s Office lack of awareness

Harris advised that when he studied budgets at the LAO, he did not compare what departments reported to the DOF in their fund condition statements against actual cash balances reported to the SCO, and was not even aware of the cash balance reports. When asked if such a comparison might be a good idea, Harris stated he believed it would be a lot of work resulting in mostly simple reconciliations and likely not be worth the effort. Harris also pointed out that “whether this happened in ’99 or 2000, the fact of the matter is the Department of Finance never reconciled [the two balance reports].” (MHtr, pp. 44-46.)

When asked if there was any concern about sending the DOF inaccurate figures and underreporting at least \$15 million, Harris again noted there was a plan to rectify it. Harris was advised that we had differing views as to the appropriate terminology, and that what he described as “rectifying an error” seemed to be literally saving for a rainy day and then manipulating the money to utilize funds not previously disclosed. Harris responded that: “‘disclosed’ is a tough word” and: “The fact of the matter is the cash balance was readily available at all times from the Controller’s office.” “If anybody had wanted to look at it.” (MHtr, pp. 47-49.)

When advised it was difficult to understand why it was okay not to report correct dollar figures to the DOF for years, Harris stated he did not know that it was okay, but based on the way it was presented to him “it was an error that we were aware of and that we were going to fix.”³ Harris was advised that what he called “rectification” appeared to entail using monies that had not been reported to the DOF. Harris responded: “Budgeting is art, not science.” Harris further stated: “There are always errors, always. And part of the art is correcting those errors over time.” This interviewer then advised Harris that instead of referring to it as surreptitiously bringing in previously undisclosed monies, it apparently could now just be called “artistry.” Harris responded: “You can call it anything you want.” When told the term “artistry” came from him, Harris responded: “I’ll stand by that.” (MHtr, pp. 50-52.)

6. Discovery and discussions; interview conversation part three

Harris was advised that others had stated that when Lopez learned of the discrepancy he went to Harris, and was informed by Harris the agency knew about the problem, that it had existed for some time, and that nothing was going to be done about it. Harris stated he did not recall such a conversation with Lopez, nor did he have such a conversation with David Saxby, who served as assistant deputy director of administrative services under Lopez. Harris did volunteer that the investigation into the vacation leave buy-back program made clear to Harris that Lopez “said lots of things to lots of people that had no basis in reality.” (MHtr, pp. 54-55.)

Harris was asked if using the undisclosed funds in order to avoid threatened park closures had ever been discussed. Harris stated he did not recall such a discussion, and reiterated his belief that if the SPRF fund balance was correctly reported, the result would be a reduction in the general fund appropriation and no net increase in funding to the Department. Harris then again acknowledged having two specific discussions of the matter; first when Brown and Domich brought it to his attention, and in 2012 when he and Robertson discussed it. He also stated “there was probably passing reference to it a number of times over the years.” (MHtr, pp. 56-58.)

³ Harris noted the undisclosed funds could not spare parks from closure as the Department’s spending authority is limited to its appropriation. Undisclosed money could therefore only be used when revenues fell short of forecasts and appropriations. (MHtr, pp. 53-54.)

When asked why he never briefed Coleman about the discrepancy and why it was not worth bringing to her attention, Harris stated that when he arrived as head of administrative services, Coleman had already been director for two years. He also had eight or nine managers reporting to him who averaged 25 years' experience at Parks, so he was very much the new kid on the block. He recalled that the subject of the discrepancy was presented to him by Brown and Domich as a past event, and he was told the decision how to fix it had already been made. He reiterated that Brown and Domich did not identify who, if anyone above them, had made that decision, and noted that Ron Brean had been chief of administrative services immediately before him, and Denzil Verardo had been the administrative services division chief before Brean. (MHtr, pp. 61-63.)

Discussions and activity following published reports of the fund balance discrepancy

Approximately one hour after this investigator arranged Harris's interview during a telephonic conversation, Harris was provided a confirming letter directing him not to discuss the matter with current or former coworkers. Harris then telephonically advised this investigator shortly after receiving the notification letter (and reiterated in the interview), that in the interim (before receiving the confirming letter) he sent emails to Coleman and former Parks Department chief counsel Ann Malcolm to advise them he had been contacted for an interview. Harris stated he received an email response from Malcolm thanking him for the heads up.⁴ (MHtr, pp. 59-61.)

Harris advised he has spoken with Coleman since the fund balance reporting discrepancy became public. He stated their discussion was in "very general terms" and he could not recall specifically what she said. Harris did recall that Coleman was "very upset by the turn of events," and "convinced that the situation could have been dealt with differently." Harris stated he did not recall if Coleman indicated to him whether she had been aware of the discrepancy. He did recall that Coleman "expressed displeasure over the entire situation . . . [b]oth that the situation had arisen and that the administration chose to deal with it the way they did." (MHtr, pp. 65-66.)

⁴ This investigator spoke by telephone with Ann Malcolm who stated she had no knowledge of any undisclosed monies in any Parks Department funds. No information to the contrary has come forward. It is noted that a Blackberry device used by Malcolm and belonging to the Department was taken into possession after her departure. Malcolm was asked to provide the password for the device, and she stated she could not remember it.

Harris was asked if he believed the administration's response was appropriate. He replied that the situation demonstrated a "fundamental breakdown in State government," and opined that "there is a huge gap between what managers in State government are required to do, particularly by way of administering their programs, and the expectations of the administration and maybe the legislature." (MHtr, pp. 67.)

Concluding Topics

Harris was asked about a February 24, 2012 email from a KQED reporter to Parks communications deputy director Roy Stearns inquiring into a \$12.9 million dollar appropriation from the SPRF to the Department of Justice to pay five settlements. Stearns had forwarded the email to Coleman, Harris, legislative deputy director Williams Herms, and operations deputy director Tony Perez. Harris had responded that \$1.5 million would come from "the reserve held in the SPRF," and the rest from general fund. When asked about that SPRF "reserve," Harris stated his reference to a reserve was not to any undisclosed funds, but simply referred to the spread between forecasted revenues and the lesser amount of expenditures the Department had committed to.⁵ (MHtr, pp. 78-83.)

Harris was asked to compare and describe Coleman's knowledge level to his own concerning the intricacies of a budget and the state budget process. Harris stated he assumed Coleman's knowledge was less detailed than his own. When asked to what extent did she familiarize herself with the Parks budget as it was being prepared and presented, Harris stated he believed she "had the Parks assignment" when she worked at the LAO. Harris also stated he understood Coleman was very familiar with the budget in terms of what it cost to do various things, but did not think she paid attention to whether the figures on the SCO reports were right. (MHtr, pp. 89-94.)

Ultimately, Harris concluded it was certainly possible that Coleman would not be aware there was a discrepancy in the cash balance reported to the SCO versus the fund condition balance reported to the DOF. (MHtr, pp. 94-95.)

⁵ Other witnesses consistently explained that not all forecasted and appropriated SPRF revenue is allocated to the Parks divisions, so that a reserve cushion is maintained for unexpected issues and particularly in the event revenues do not reach forecasts. (See, e.g., Manuel Lopez 9-28-12 interview transcript at p. 4, fn. 5; Tom Domich 9-12-12 interview transcript at pp. 31-32; and Aaron Robertson 8-22-12 interview transcript at pp. 51-52.)