Summary of 8-22-12, 8-23-12, and 12-13-12 interviews of Dorothy Kroll

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

Preface: After receiving this assignment on July 18, 2012, this investigator initially met with administrative services deputy director Aaron Robertson on July 20 and 25, and with Dorothy Kroll on July 27, 2012, to obtain background information and identify the issues and scope of the investigation. Recorded interviews of Robertson and Kroll were later conducted on August 22, 2012. Kroll provided additional and clarifying information the next day, and a second brief follow-up interview was conducted on December 13, 2012. The transcripts of Kroll's August 22, August 23, and December 13, 2012 interviews are respectively cited to herein as DKtr1, DKtr2, and DKtr3.

State Parks and Recreation Fund Balance Reporting Discrepancies

1. Initial discovery and examination

Kroll is an accounting administrator III and has been the Department's chief accounting officer since mid-2007. Kroll started with the Department of Parks and Recreation's administrative services division in November 2000 as a senior accounting officer. (DKtr1, pp. 5-8.)

When Kroll began working at Parks her supervisor was Cheryl Kilzer and the chief accounting officer was Freda Luan-Dun. Kroll recalled that near the end of 2001, about a year after she started, Luan-Dun approached Kilzer and Kroll with a special assignment for Kroll to work on. Specifically, Luan-Dun advised Kilzer and Kroll that then-budget officer Becky Brown had asked Luan-Dun for assistance in determining why the fund condition statement submitted the past several years by the budget office to the Department of Finance (DOF) for the State Parks and Recreation Fund (SPRF) did not match the year-end fund balance reported by the accounting office to the State Controller's Office (SCO). (DKtr1, pp. 9-12, 25-27, 76, 83; DKtr3, pp. 2-4.)

Kroll was unfamiliar with budget operations and the composition of a fund condition statement, and she set about to research the matter. She examined what was reported in the budget fund condition statement and compared it to the year-end figures the accounting office reported via the California State Accounting and Reporting System (CALSTARS). (DKtr1, pp. 17-18.)

After educating herself as to the components of a fund condition statement, Kroll understood that the fund condition statement starting balance should be the same as the fiscal year-ending, and next fiscal year-starting, general ledger account balance reported by accounting to the SCO. Kroll's examination revealed that the budget office was correctly reporting revenues and expenditures. She also saw that the starting balance reflected in the budget fund condition statement matched the ending balance in the previous year's fund condition statement, but did not match the true fund balance reported into the CALSTARS system. Kroll concluded the error causing a discrepancy in the budget versus accounting balance reports must lie in the budget office's calculations for, and figures represented as, prior year adjustments. During her interview, Kroll further observed that the budget fund condition statement was a document former budget officer Becky Brown had personally been preparing. (DKtr1, pp. 20-23, 86.)

Kroll reports that Brown and Luan-Dun agreed the problem must be in the prior year adjustment figures the budget office was reporting to the DOF, and Brown took the project over. Kroll did not further analyze the prior-year adjustment figures to determine exactly what the problem was. (DKtr1, pp. 24-25.) Kroll also examined the balances reported to the SCO and DOF for the Off-Highway Vehicle (OHV) and Winter Recreation funds, and detected no disparities. (DKtr1, pp. 26-27, 50.)

2. Department of Finance fund balance disparity memos of 2002 and 2003

Several months after she had begun her research, Kroll was given a DOF memo dated April 8, 2002, concerning the subject of "Fund Balance Differences," and which contains the name Cheryl Kilzer in its header. (DKtr1, p. 17; DKtr3, pp. 2-4; Exhibit G attached.) An evidently incomplete single attached page lists disparate balances reported to the SCO and DOF for a variety of special funds, including the SPRF, OHV, and Winter Recreation funds. The memo directs departments to "provide a written explanation of the differences to their Finance budget analyst and to the SCO."

The following year, Kroll obtained a copy of the DOF's "2001-02 Fund Balances Differences" memo issued June 5, 2003, which contained a cover message and directive identical to the previous year's memo. (Exhibit H attached.) Three pages attached to the June 5, 2003 memo reflect a total of $1.9 billion in disparate balances reported to the SCO and DOF with regard to some 78 different special funds, this time including the Parks Department's SPRF and Deferred Maintenance Account.[1] The April 2002 and June 2003 DOF memos sent to the Department's budget office are the only two DOF fund balance discrepancy memos Kroll ever saw. (DKtr1, p. 112.) Kroll saved the two memos for a decade and produced them during her interview.

Kroll recalled the disparity in SCO versus DOF fund balance reports for the SPRF at the end of fiscal year 2001-02 was about $26 million. The June 5, 2003, DOF memo and attachment confirms that the SPRF balances reported to the DOF and SCO as of June 30, 2002, differed by $26,825,000. (Exhibit H, attachment p. 2.) This was a $4,060,000 increase over the disparity in SPRF balances reported as of June 30, 2001. (Exhibit G, attachment p. 1.)

3. Post-discovery handling of the SPRF fund balance discrepancy

a. 2002-2005 discussions with Luan-Dun and Brown

Each year thereafter Kroll provided the Department's budget office with fund condition statement for the SPRF, OHV, and Winter Recreation funds that reflected the true balances sent to the SCO, and which matched the prior year-ending fund balances. The budget office, however, did not correct its prior-year adjustment figure and continued the more than $20 million discrepancy being reported for the SPRF. (DKtr1, pp. 30-31.)

When Kroll prepared the balance reports after the close of the fiscal year in 2002, Kroll asked Luan-Dun why the budget office was not using the correct figures Kroll had provided. Kroll states that Luan-Dun and Brown both personally advised Kroll that the decision whether to do so was "political" and something only "executive staff" "upstairs" could decide. Kroll reports that the explanation she consistently received from both

[1] The DOF has stated that the vast majority of special fund balance reporting disparities are reconcilable and due to "human error" and differences in accounting procedures. (See Rosenberg/MercuryNews.com, *State review of special funds finds errors—but no 'hidden' money*, August 3, 2012.) As the instant investigation was limited to fund balance reporting disparities for the SPRF and OHV special funds, all other fund balance disparities are beyond the scope of this examination.

Luan-Dun and from Brown was "if we tell Finance we have twenty-six million dollars extra in this fund, they will cut our general fund allocation budget authority and basically replace it with this twenty-six million." (DKtr1, pp. 32-33, 96-97.)

b. 2005-2010 discussions with Lopez, Paschal, and Taylor

After Brown retired in 2005, Dorothy discussed the matter with incoming budget officer Manuel Lopez who noticed the disparity shortly after arriving at Parks. Lopez expressed concern and asked Kroll why the Department had not been reporting the correct SPRF balance to the DOF. Kroll told Lopez it had been that way at least five years, and she had always been told it was a political decision, and if DOF knew about the additional funds the Department's general fund would be cut. Kroll told Lopez he needed to take the issue up with his boss, then-administrative services deputy director Michael Harris. Kroll also recalled trying to explain the issue to Olaya Paschal, who had been Kroll's supervisor at one point. Kroll stated that Paschal was not an accounting person, did not appear to understand the issue, and that Paschal's response was vague and essentially non-responsive. (DKtr1, pp. 33-35, 38-39.)

In the fall of 2006, as Lopez prepared the budget fund condition statement, Kroll and Lopez again discussed the SPRF balance reporting discrepancy. Kroll asked if Lopez had talked to anyone upstairs about it and whether it was going to be fixed. Lopez told Kroll he had spoken with Michael Harris.[2] Lopez informed Kroll that Harris had explained the matter was "political," and if the Department told DOF about the money, DOF would cut the Department's general fund appropriation. Kroll states that she spoke with Lopez many times over the years about the SPRF balance discrepancy, and Lopez has told her several times that Harris knows about it and considers it a political problem. (DKtr1, pp. 36, 39, 41, 97-98, 105.) She states that she has raised the issue of the undisclosed SPRF funds at least a dozen times over the past ten years, and has always been told the same thing--it is political and if the DOF is informed the Department's general fund will get cut. (DKtr1, p. 88.)

[2] Department organization charts identify Harris as having been deputy director of administrative services in 2004 and 2005 when Lopez first became budget officer. Harris later served as deputy director of policy and strategic panning from 2006 to 2008, and as acting chief deputy director of the Department from late 2008 to July 2012.

Kroll and this interviewer reviewed the DOF's spreadsheet (Exhibit A hereto) that details the SPRF balance figures reported to the SCO and DOF as far back as 1993. The spreadsheet shows that the SPRF balance reporting disparity began to grow sizably between fiscal years ending in 1997 and 1998, and continued to grow significantly to the end of fiscal year 2003. Kroll stated that she does not believe either the accounting or budget offices have records going back as far as the nineties. (DKtr1, pp. 74-75.)

Kroll noted that every year the accounting office would receive a certificate of excellence in government reporting from the SCO and had done so every year since she arrived in 2000. However, the Department was not receiving certificates for the SPRF and OHV funds. Kroll was irritated as she knew the accounting side prepared accurate numbers, and also knew that the budget side was not correcting the inaccuracy in its fund condition statement. Each year Kroll would report the failure to receive such certificates to Lopez. Since 2007 she has forwarded to Lopez and others above her, including Olaya Paschal and Gayle Bohlmann, an email from Kroll's assistant, Lisa Ortega, advising that once again the reported SPRF cash fund balance was not within $100,000 of the balance reported in the budget fund condition statement. (DKtr1, pp. 89-93; Exhibit M attached.)

Kroll also discussed the SPRF balance reporting discrepancy with Cheryl Taylor, who took over the budget officer position in approximately 2008 and several months after Lopez had been named deputy director of administrative services. Taylor had noticed the problem as well and asked Kroll what the department was doing. Kroll explained the story and told Taylor she should take the question up with her boss Manuel Lopez. (DKtr1, pp. 39-40, 102-103.)

Kroll advised that she has spoken with Taylor since the SPRF fund balance discrepancy issue became public. Kroll reports that Taylor stated she had been in several budget development meetings with Michael Harris, Ruth Coleman, and Manuel Lopez where the subject of fund discrepancies came up. Kroll reports that Taylor also stated that a Brenden Murphy, whom Kroll believes works for the Legislative Analyst's Office, had been part of such budget development discussions and that the subject of the SPRF fund balance reporting discrepancy came up. Kroll reports that Taylor offered her opinion that all the people in these budget development meetings were aware of the fund discrepancy. (DKtr1, pp. 103-106.) Notably, however, the statements Taylor provided during her interview in this investigation contradict the assertions which Kroll attributes to Taylor.[3]

c. 2010-2012 discussions with Brenneman, Saxby, and Robertson

Elsie Brenneman became budget officer in February 2011. Brenneman also noticed the SPRF fund balance discrepancy following the close of fiscal year 2010-11, and asked Kroll what was going on with the budget fund conditions statement, and Kroll explained the story. Kroll reports that Brenneman later advised Kroll she had spoken with Lopez about it. (DKtr1, pp. 116-117.)

Kroll stated that Aaron Robertson came to the Department as deputy director of administrative services on January 3, 2012. Kroll met with Robertson later that week and, while realizing he needed some time to adjust, verbally informed him there were some things she believed he needed to look into. A couple weeks later Robertson approached Kroll and said he understood from talking with Kirk Sturm, who had been interim administrative services deputy director for about three months in 2011, that Kroll had a list of questions she had given to Sturm. Kroll forwarded to Robertson the email and attached list of 23 questions she had sent to Sturm on November 20, 2011. (DKtr1, pp. 120-121; DKtr2, pp. 2-3.) Questions 19 and 20 specifically inquire as to why approximately $20 million dollars in the SPRF fund is habitually not reported to the DOF and utilized to "save our parks?" (Exhibit K attached.)

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[3] In her interview during this investigation, Taylor stated that she did not recall the subject of fund discrepancies being discussed in meetings with Coleman, Harris, Lopez, and others. Taylor stated that she did recall discussions about increasing SPRF revenues while trying to maintain existing general fund appropriation levels, since SPRF revenue is vulnerable to weather variables and attendance fluctuations. Taylor then offered a theory that a small percentage of SPRF revenues received in excess of projections had been banked but not disclosed over the years, thus incrementally leading to the current undisclosed reserve of some $20 million in the SPRF. (See transcript of Cheryl Taylor 8-22-12 interview, pp. 92-111.) The evidence, however, indicates the amount of undisclosed SPRF funds grew from 1997 to 2003, well before Taylor's arrival at Parks. And while the SPRF balance has consistently been misstated in the DOF fund condition statements, no evidence has come forward which indicates there has been any non-disclosure of SPRF revenue. Indeed, Kroll's review beginning in 2001 indicated revenues were being correctly reported during the SPRF discrepancy growth period.

Kroll stated that, a week or two thereafter, Robertson forwarded and delegated her email to then-assistant deputy director of administrative services David Saxby.[4] Kroll reports that she and Saxby met for approximately 20 minutes to discuss her questions, and briefly discussed questions 19 and 20 regarding the undisclosed $20 million in the SPRF. Kroll does not recall Saxby saying anything about the undisclosed SPRF funds, and they had no follow-up discussions about it. (DKtr2, pp. 3-4.) Kroll stated she believes it was in July of 2012 that she verbally apprised Robertson of the $20 million dollar fund balance discrepancy.[5] (DKtr2, pp. 4-6.)

Kroll stated that she became increasingly frustrated about and committed to resolving the issue in 2011, as the Department had taken a $22 million general fund cut and faced the possibility of park closures. Kroll stated that her assistant, Lisa Ortega, also wanted to bring the existence of the undisclosed monies to light. Concurrently, Kroll believes that Lopez tried to keep the SPRF fund discrepancy issue from Saxby's attention. She recalled a budget meeting on February 28, 2011, with Lopez, Saxby, Ortega, and herself, when she tried to raise the issue. Kroll stated that Lopez kicked her underneath the table and indicated she should remain silent. Kroll is aware that Saxby did subsequently learn about the discrepancy, but does not know when Saxby became aware. (DKtr1, pp. 122-125.)

Kroll recalled meeting with Kirk Sturm after he took on the job of interim administrative services director in October 2011. Kroll reports that while Saxby was in the room, Sturm stated: "I know from talking to folks in the field that there's questions I should be asking, but I don't know what those questions are, so can you help me out with that?" (DKtr1, p. 126.) Kroll also reports that because Saxby was in the room, Sturm also told her: "If you're uncomfortable doing that from your state computer . . . you can send it to my home e-mail address." Kroll reports that she did precisely that and on

[4] Robertson reports that he did not immediately review Kroll's email and confirms he delegated the matter to then-assistant deputy director David Saxby. Robertson states that Saxby did not promptly report back to him concerning the matter, and Robertson first learned about the SPRF fund balance discrepancy when Kroll and Brenneman verbally apprised him of it in April 2012. (Transcript of Aaron Robertson 8-22-12 interview (ARtr), pp. 1-2.)

[5] Robertson recalls receiving Kroll's verbal report in April 2012. (ARtr, p. 8.)

November 20, 2011, at 1:15 p.m., sent an email and her one-page attached list of 23 questions to Sturm's personal email from an email address belonging to her husband. Kroll also states that she and Sturm never had an opportunity to discuss the email and attachment. (DKtr1, pp. 126-128; Exhibit K attached.)

d. Additional meetings where surplus SPRF funds were discussed

Kroll indicated she also believes that Tony Perez, former deputy director of operations, and Brian Cahill, assistant deputy director of operations, were aware of the SPRF fund balance discrepancy and undisclosed monies. (DKtr1, p. 117.)

Specifically, Kroll recalled two other meetings where she states she brought up the fact that not all available SPRF monies had been disclosed to the DOF. One was a meeting in September 2011, with Michael Harris, Manuel Lopez, David Saxby, Elsie Brenneman, and Tony Perez, concerning the Del Norte Coast Redwoods State Park. A topic was the possibility of collaborating with the National Park Service to operate and keep the park open, provided the Department could find the state funds it must contribute. Kroll reports that: "again, I said, if we told Finance what our fund condition is, we could maybe get the authority." (DKtr1, p. 130.) In her follow-up interview, Kroll stated she had made the comment: "remember, we really do have more in our fund balance then what's been reported," and that Harris, Saxby, and Perez all nodded their heads in agreement and thus indicated they knew. (DKtr2, pp. 24-26.)

The second meeting Kroll recounted occurred in February or March of 2012 when the subject of automated pay machine revenue was discussed among Kroll, Aaron Robertson, Elsie Brenneman, Mary Veliquette, and Brian Cahill. Kroll recalls Brenneman making a comment to the effect that the Department always spent more than it brought in revenue. Kroll states that, having become increasingly frustrated with the non-reporting of available SPRF funds in light of pending park closures, she made the comment: "if we were reporting the fund conditions correctly to Finance, that statement would not be true." Kroll states that Robertson stopped the meeting as he could see Kroll was upset. (DKtr1, p. 129.)[6]

Lastly, Kroll recalled being summoned in July 2012 to Ruth Coleman's office shortly before Coleman's resignation. In that meeting with Coleman, Harris, Robertson, and communications director Roy Stearns, Kroll explained a spreadsheet that reflected fund balance discrepancies. Kroll stated that she "had to explain the spreadsheet" to Coleman, and that Coleman "looked like she had been punched in the gut." Kroll also recalled that Coleman stated that she did not know, and remarked "why in the world wouldn't Manuel have told me." (DKtr1, p. 158.)

Off-Highway Vehicle Fund Balance Reporting Discrepancies

In discussing past balance reporting disparities for the OHV fund, Kroll recalled that Marilyn Evans-Jones had served as a budget office manager under Cheryl Taylor and been tasked with examining the OHV fund after $90 million had been loaned from the fund during the 2008-09 fiscal year. Kroll explained that the DOF treats such loans as revenue transfers and the SCO treats them as expenditures. Kroll believes this helps explain why in some years the OHV balances reported to the SCO and DOF are different. (DKtr1, pp. 51-53, 153-154.)

Kroll opined that the disparity in the OHV balances reported June 30, 2010 (when $20,580,000 *more* was reported to the DOF than was reported in the year-end SCO cash report) was due to another loan of OHV monies not correctly reported in the DOF fund condition statement. (DKtr1, p. 56.) Kroll also advised that in reports for fiscal year ending June 30, 2010, the budget office errantly input a prior-year adjustment as a positive $30 million when it should have been a negative $30 million, which may help explain the $33.4 million amount under-reported to DOF as of June 30, 2011. (DKtr1, pp. 56-58.) Kroll's conclusion is that all discrepancies in balance reports concerning the

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[6] Robertson and Veliquette both indicated in their interviews that they were not then aware of discrepancies in the SCO versus DOF balance reports. It thus appears that those in attendance other than Kroll and Brenneman may not have understood precisely that Kroll was referring to the discrepant SPRF fund condition statement which resulted in the undisclosed monies in the SPRF.

OHV fund relate to budget office computation and reporting errors, and that there has never been any intentional failure to disclose OHV funds. (DKtr1, pp. 60-61.)

Automated Entrance Fee and Pay Shower Revenue

Kroll also explained that another issue of concern was that Lopez had directed some 20 percent of revenues from automated park entrance pay machines, and possibly also pay shower monies, into a reimbursement account, and told Kroll he had obtained DOF approval to do so. Kroll indicated the total of such retained funds exceeded $600,000. Kroll advised that, to her knowledge, the $600,000 remains in the account today. She believes the money is not properly credited into a reimbursement account but should instead be posted and reported to the DOF as revenue. Kroll indicated the monies stopped being directed into the account in June 2011 after it was pointed out that over $600,000 had been deposited into it. (DKtr1, pp. 133-137, 141.)

Kroll was uncertain if or how much of the funds have been expended, but believes some $300,000 of it had been encumbered. Kroll also noted that Robertson asked for a detailed report when she brought the matter to his attention in March or April 2012, and does not believe the issue has yet been resolved.[7] (DKtr1, pp. 137-139.)

Miscellaneous Hiring, Contracting, and Travel Expenditure Issues

During her follow-up interview on August 23, 2012, Kroll briefly mentioned the following three additional issues:

First, Kroll questioned whether the hiring of David Saxby's son-in-law, Paul Furry, in the Department's IT section was appropriate and whether Saxby engineered it. Kroll indicated that several IT mangers have informed her they did not know a staff services manager I position existed in IT, and were simply told they were getting the position and Furry was filling it. (DKtr2, pp. 9-12.) Saxby's involvement on Furry's interview panel is further discussed in the summary of David Saxby's interview.

[7] Upon receiving Kroll's report this interviewer also spoke with Robertson and recommended suspending the expenditure of any monies held in "reimbursement" accounts until the Department had the opportunity to review and resolve the matter.

Second, Dorothy expressed concerns that Saxby and then-business management services officer Ted Novak would change the amount on Department of General Services contract documents for contracts under $5,000 without DGS approval, in order to match a revised, final invoiced sum. Kroll stated that Saxby and Novak claimed to have obtained approval to do so from a DGS legal analyst. Kroll stated that her staff then contacted the same analyst who refuted Saxby's and Novak's claims. (DKtr2, pp. 15-18.)

Finally, Kroll stated that Saxby would maneuver around the Governor's executive order limiting travel expenditures to those items considered mission-critical. Kroll stated that Saxby would do so by denominating an item such as a conference as job-required training. (DKtr2, pp. 19-20.)