

Summary of 9-28-12 interview of Manuel Lopez

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

Work History and Background

Manuel Lopez worked 22 years with the State. He started in 1990 as an account clerk at the Department of Education, transferred to Caltrans in the mid-1990s as an accountant trainee, and promoted to senior accounting officer in the late 1990s. Lopez then went to the DMV as an associate accounting analyst. Within six months he was named special assistant to the DMV deputy director of administration, where he “did basically all” of the administration division’s budget work for six months. (Manuel Lopez 9-28-12 interview transcript (MLtr), pp. 2-7.)

In approximately 2001 Lopez returned to Caltrans as a staff services manager I in the budget office. He states that he managed the capital outlay and local assistance budget processes for major Caltrans projects. Lopez then went to the Caltrans planning division in 2002 or 2003 as a resource manager and was “in effect” the division’s administrative officer handling budgets, clerical personnel, and contracts. Lopez states he promoted to staff services manager II around 2004 and returned to the main budget office at Caltrans headquarters. Lopez reports that while there he earned an accomplishment award for automating the budget process. (MLtr, pp. 7-12.)

In April 2005, Lopez transferred to the Department of Parks and Recreation as budget officer. He reports he was hired by Michael Harris, then-deputy director of administrative services, and Harris’s assistant deputy director, Rob Boriskin. Within six months Lopez promoted to staff services manager III and continued as the budget officer. (MLtr, pp. 12-15.)

Lopez reports that he served out-of-class for a three-month period as assistant deputy director of administrative services. In July 2005 Harris went on leave and there was a succession of deputy directors for administrative services, one of whom was Keith Demetrak (deceased). Department records show that Lopez was promoted to the administrative services deputy director post in April 2007.¹ (MLtr, pp. 15-16, 36, 63-64, 73, 92-95.) Lopez was relieved of that position in November 2011 when the details concerning a leave buy-out program began to unfold. Lopez was recommended for termination in a May 1, 2012, personnel investigation report, and Lopez left the Parks Department in May 2012.

¹ Records show Harris was made deputy director of policy and strategic planning upon his return in January 2006.

Lopez earned an AA in accountancy from Sierra College in the 1990s. He earned his bachelor's degree in economics from Cal State Sacramento in 1998. (MLtr, pp. 3-4.)

While Lopez was the Parks Department budget officer, Harris tasked Lopez with establishing a sustainable staffing system for building the Department's budget. Lopez stated that previously the budget had been constructed exclusively by his predecessor budget officer, Becky Brown. Lopez advised that while Brown's staff would work on various components of the budget, Brown was the only person who knew how to put the entire budget together, and that "basically" "all roads led to Becky for the development of the budget." (MLtr, pp. 15-16.)

Discrepancies in Balance Reports for the State Parks and Recreation Fund

1. Discovery and internal discussions; interview conversation part one

Lopez reports that, within a month of his arrival in April 2005, Brown informed him of a disparity in the fund condition statement going to the Department of Finance (DOF) and the cash balance reported to the State Controller's Office (SCO) for the State Parks and Recreation Fund (SPRF). Lopez states he received no similar briefing from Brown regarding any disparities in balance reports for the Off-Highway Vehicle (OHV) fund. (MLtr, pp. 17-18.)

Lopez stated that when Brown briefed him regarding the disparity between the SPRF fund condition and cash balance reports, Brown informed him it was approximately \$20 million dollars and also advised that management was aware of the discrepancy. Lopez reports that Brown also explained that the disparity stemmed from an accounting error that involved a projected expenditure which did not occur, and gave Lopez no more details. Lopez stated that in such circumstances a correction should be made via a prior-year adjustment in the budget fund condition statement, but no such adjustment had been made. Lopez did not know why and believed it was an oversight. He believed it was an expenditure projected to take place about three or four years before Brown retired in 2005. (MLtr, pp. 18-20, 30.) When asked how he knew the disparity in reported SPRF balances was traceable to a single event, Lopez stated that

was what Brown told him. Lopez acknowledged he never examined the Department's financial history to confirm the disparity arose from a single event.² (MLtr, pp. 156-157.)

Lopez further advised that when Brown briefed him about the disparity, Brown said she wanted to give Lopez a heads up because Chris Holtz, formerly a DOF analyst who had worked on the Parks budget, was now doing budget work for the State Assembly and Brown wanted Lopez to be prepared in the event Holtz raised the issue. Lopez also stated that Brown did not indicate Holtz was specifically aware of the disparity, but Brown wanted Lopez to be aware should Holtz realize there was a mistake. (MLtr, pp. 23-24.)

2. Rationale behind, plan for, and correcting the SPRF fund balance disparity

a. Single adjustment versus incremental corrections

Lopez stated that given the size of the discrepancy he felt it was important to discuss the matter with Harris and Boriskin. He stated that in May 2005, and within a month of his arrival at Parks, he met jointly with Harris and Boriskin and discussed the matter.³ Lopez reports that he advised them that Brown had told him there was an approximate \$20 million dollar discrepancy in the SPRF fund balance reported to the DOF, and that he explained it could be easily corrected with a prior-year adjustment in the budget documents. (MLtr, pp. 21-29.) Lopez reports that his suggestion to fix the \$20 million dollar disparity with a prior-year adjustment was rejected as it was too large and would call into question why the money had sat there so long. Lopez stated the concerns were that the discrepancy would put the Department in a bad light and subject it to a general fund reduction and a corresponding mandate to increase SPRF revenues. Lopez explained that over the years the general fund appropriation had been consistently cut and the

² A DOF spreadsheet reflects disparities in fiscal year-end balances reported to the DOF and the SCO for the SPRF from 1993 to 2011. (Attached Exhibit A.) From the close of the fiscal year in 1996 through the close of the fiscal year in 2003, the disparity between reported balances grew in annual increments, climbing from \$5,543,000 on June 30, 1996, to a high of \$29,184,000 on June 30, 2003. The data does not support the claim that a single event caused the SPRF balance report discrepancy.

³ Lopez reported he was aware Harris had been a fiscal consultant to the Legislature and that director Ruth Coleman had worked for the Legislature as well. Lopez recalled that both were highly experienced in the budget development process and were the liaisons to the Legislature. Lopez stated that Harris was very involved in the budget process, and whenever Lopez briefed Boriskin about a budget matter, Harris was present as well. (MLtr, pp. 25, 74.)

Department had become increasingly reliant on SPRF revenues. As that reliance increased, so increased the risk of running into a deficiency should SPRF revenue targets not be met. Lopez stated the idea as explained to him was to keep a cash balance in SPRF in order to “backfill” any unrealized revenues, and the money thus served as a safety net.⁴ Lopez stated that Harris was the person making the decisions and Boriskin listened. (MLtr, pp. 29-33.)

Lopez states he then offered an alternative solution, which was to insert annual, incremental prior-year adjustments of approximately \$2 million a year and thereby correct the discrepancy over a period of years.⁵ Lopez reports that Harris accepted that alternative proposal. (MLtr, pp. 34, 90.) Lopez stated he accomplished one such incremental correction by changing the prior-year adjustment figure and thereby affecting the budget fund condition balance reported as of the close of fiscal year 2005-06. Lopez reports he was only able to personally accomplish one such incremental adjustment. He recalled attempting to make another such adjustment after he became head of administrative services in 2007, and while Jason Summers was acting budget officer, but recalled that the assigned DOF analyst did not understand the change, did not accept it, and Summers “didn’t have an accounting background that could sort of explain it.”⁶ (MLtr, pp. 34, 87-95, 168-169.)

⁴ When asked if any other reserve SPRF monies were kept, Lopez stated that a \$6 million dollar appropriation for waste water projects was annually received, contingent on the agency realizing \$6 million additional revenue. Lopez stated that the six million served as a safety net “to adjust for that six million dollar rollover that we had every year.” (See *infra*, at p. 6, fn. 8.) Lopez also noted that less than the full SPRF appropriation is allocated out in order to maintain a reserve. (MLtr, pp. 113-114, 120-121.)

⁵ Lopez claimed he was concerned his career at Parks could be impacted if he didn’t find a solution to the SPRF discrepancy issue. (MLtr, pp. 134-135.)

⁶ When asked if he discussed the plan to incrementally correct the \$20 million SPRF balance discrepancy with Coleman, Lopez stated he did not think so, and could not confirm whether Coleman knew of the available SPRF funds at the time, because he was the budget officer and did not converse one-on-one with Coleman. Instead, he reported directly to Harris, and “took what [Harris] told to me as direction in terms of how I build a budget.” (MLtr, pp. 57, 103-105.)

b. What the State Parks and Recreation Fund numbers show

The DOF's spreadsheet attached hereto as Exhibit A reflects the disparate SPRF balances reported to the DOF and the SCO from 1993 to 2011. Notably, over an eight-year period the disparity grew by \$27 million--from a low of \$2,389,000 as of June 30, 1995, to a high of \$29,184,000 as of June 30, 2003. The amount undisclosed to the DOF then decreased over the next four years, so that the disparity between the two balances during those years was:

(1) \$26,694,000 as of June 30, 2004; (2) \$23,929,000 as of June 30, 2005; (3) \$21,589,000 as of June 30, 2006; and (4) \$20,218,000 as of June 30, 2007. The disparity thereafter remained close to \$20 million dollars from 2007 through 2011.

The spreadsheet thus reveals that the disparity between the two balances was reduced between 2003 and 2007 in the following amounts: (1) by \$2,490,000 between fiscal years ending 2003 and 2004; (2) by \$2,765,000 between fiscal years ending 2004 and 2005; (3) by \$2,340,000 between fiscal years ending 2005 and 2006; (4) and by \$1,371,000 between fiscal years ending 2006 and 2007. The fact the gap was closed by \$2,340,000 between fiscal years ending in 2005 and 2006 is consistent with Lopez's statement that he accomplished one incremental adjustment that would have impacted the closing balance for fiscal year 2005-06. (MLtr, pp. 87-95, 158-159.) While Lopez takes credit for accomplishing the \$2,340,000 adjustment reflected at the close of fiscal year 2005-06, whether similar prior-year adjustments explain the three reductions in the disparity reflected at the end of each fiscal year in 2004, 2005, and 2007 is uncertain. It appears likely, however, given that there is no indication any of the undisclosed SPRF funds were ever expended.⁷

⁷ As stated at pages 10-11 of this investigative report, current budget officer Elsie Brenneman advises she has compared SPRF revenues and expenditures reported to the DOF and SCO for each year going back to 2000, and the amounts reported to the two offices are consistent. It thus appears the other unexplained incremental corrections which reduced the disparity between balances reported to the DOF and SCO, and thus reduced the amount of funds undisclosed to the DOF, are also likely due to changes traceable to prior-year adjustment figures, the component originally identified as the root cause of the balance reporting disparities. Consequently, notwithstanding that both Michael Harris and Manuel Lopez mentioned the possibility of "backfilling" unrealized SPRF revenue with the undisclosed funds (see the following section--*How the surplus SPRF monies could be spent*), the available evidence shows only that the disparity between reports was reduced, and does not indicate the amount of actual SPRF funds was reduced or that there has been any surreptitious expenditure of SPRF funds.

Lopez stated that a disparity of up to \$5 million between SCO and DOF reports would not be unusual due to timing issues related to when particular monies are encumbered or unencumbered. He recalled that the SPRF fund entails some \$120 million annually, thus \$5 million represents less than five percent of the total fund. Lopez also recalled that around 1997 a large appropriation was made to the Department for deferred maintenance and major projects, and he observed such projects are not necessarily done in a single year and thus monies and encumbrances would carry over. Lopez opined that the infusion of significant funds in the late 1990s and the complexities of reporting those funds likely caused the significant annual growth in the SPRF balance disparities between 1997 and 2003. (MLtr, pp. 160-165.)

c. How the surplus SPRF monies could be spent

Lopez stated the available SPRF funds were again discussed during the 2008-09 budget development cycle when he was deputy director of administrative services. The Department's general fund was being cut by \$14 million, and Lopez reports that using the available \$20 million to offset the cut was discussed amongst Lopez, Harris, and then-deputy director of operations Ted Jackson.⁸ He stated the meeting took place in Jackson's office and that the budget was not built without operations being involved.⁹ Lopez reports he was told the suggestion was crazy, as they would suffer not only the original \$14 million dollar cut, but another \$20 million in general fund money would be taken if the extra SPRF monies were disclosed. Lopez recalled that this comment was made by Harris and that "everybody sort of agreed." (MLtr, pp. 34-38, 76-78, 135, 139-140.)

When asked how the undisclosed monies served as a safety net and what the plan was to use them, Lopez responded "it's a cash balance." When it was observed that no appropriation authorized the expenditure of the undisclosed monies, Lopez stated that he disagreed since the monies had been disclosed on the Controller's report, and reiterated it was "cash on hand." Lopez then explained that if SPRF revenues did not reach projections, and they were in a deficit

⁸ Lopez also noted the Department coped with a \$6 million dollar deficit each year. It had been put off by "rolling encumbrances forward" (disencumbering funds during a current year and moving the encumbrances to the next.) The net effect was the Department started each year six million dollars in the hole. Lopez stated it was his charge to fix that problem. (MLtr, pp. 61-62.)

⁹ Lopez specifically recalled that Harris and Jackson were present. Initially he "wanted" to say Coleman was also present, but then twice indicated he was not certain. (MLtr, pp. 37, 76-77.)

situation, they could simply utilize “that cash to backfill any revenue that was not collected in that given year.” Lopez was advised it remained unclear how money neither previously disclosed nor reflected as actual revenue could be used. Lopez explained this could be done by making a change in the prior-year adjustment line on the fund condition statement, and thereby simultaneously claiming the Department was correcting a prior reporting error while also revealing it had more money than it realized. (MLtr, pp. 42-47.)

When this interviewer described the safety net plan as “clever,” Lopez offered his Caltrans experience as “context.” He explained that Caltrans transitioned from cash to modified accrual accounting in order to free up project dollars encumbered but not yet spent. Lopez explained that while Caltrans accountants were unhappy with a complex change in accounting methodology, the DOF’s Sue Bost explained that a budget was a political document while accounting records were just that, and it was okay for there to be a discrepancy. Lopez agreed, however, that if the numbers presented in both reports are accurate, they can be reconciled to account for the different methodologies. (MLtr, pp. 47-53.)

Lopez explained that another potential remedy was explored in 2011, which was to request some continuing appropriation spending authority for the SPRF so the Department need not go through the appropriation request and approval process each year. Lopez recalled the Department was asking for \$20 million continuous appropriation spending authority, which would provide the vehicle to be able to spend the undisclosed funds. Lopez stated he felt obligated to fix the existing SPRF disparity problem and “that’s how we were able to come up with the continuous appropriation proposal.” Lopez stated he had budget officer Elsie Brenneman prepare a budget change proposal requesting continuous appropriation authority as “a shot in the dark . . . way to fix the problem,” and also to provide the capital investment seed money needed to start earning more revenues. (MLtr, pp. 79-81, 136-137.)

When asked how exactly that would work, Lopez explained that if cash existed to support the continuing appropriation it can be spent. When asked if it would require a change in the prior-year adjustment, Lopez responded “no,”-- “as you have cash coming in, you have the cash to support whatever you spend, you can spend it.” (MLtr, pp. 79-81.) This interviewer expressed confusion as to how an expenditure of cash not previously disclosed would be supported, and observed that something would have to be changed such as a prior-year

adjustment or statement of revenue. Lopez initially remarked that continuous appropriations are “off budget” and not something that had to be built annually as with traditional budgets. (MLtr, pp. 81-82.) Lopez then explained:

“You show it as revenue. You show that twenty million as revenue, and you have your continuous appropriation that you could use.” . . . “It was a – I mean, in effect, what you’d be doing is double counting this revenue to offset the expenditures that had been posted [but never consummated].”

(MLtr, p. 84-87.)

When this interviewer described this scenario as a “revenue fiction,” Lopez agreed and responded: “And that revenue fiction was sort of the offset for the reported expenditure that never materialized.” (MLtr, p. 85.) As noted at page 5, footnote 7 above, however, no evidence has been adduced that indicates any such incorrect reporting of revenue and consequent surreptitious expenditure of undisclosed SPRF funds ever took place.

d. Perpetuating the SPRF disparity

In 2008, Cheryl Taylor was hired as the Parks Department’s budget officer. Lopez had known Taylor while working at Caltrans. Lopez states he advised Cheryl Taylor of the \$20 million dollar SPRF fund balance discrepancy. He did not recall discussing the discrepancy with Taylor’s assistant, Marilyn Evans-Jones. Lopez stated he did also advise Elsie Brenneman, the budget officer that succeeded Taylor, of the discrepancy. (MLtr, pp. 95-99, 130.)

Lopez was asked if recalled directing Cheryl Taylor to change the prior-year adjustment figure reflected in a SPRF fund condition statement, or if he changed the number himself. Lopez stated he did not remember telling Taylor he would change the number himself. Lopez explained that Taylor brought him a fund condition statement with a balance that needed to be adjusted downward if it were to be consistent with the previous year’s budget report. He recalled that Taylor and budget support officer Marilyn Evans-Jones had used accounting’s year-end balance as the budget document’s next-year starting balance, rather than using the year-end balance reflected in the prior fund condition statement. (MLtr, pp. 114-115, 170-171.)

This interviewer observed that Taylor and Evans-Jones evidently stumbled onto a more accurate number by utilizing the accounting section’s figures. Lopez agreed that was true and that the accounting section’s reported balance included the \$20 million dollars not previously

disclosed in the fund condition report as well as uncleared checks. Lopez stated he directed that they reconcile the proposed fund condition statement to the prior year's budget, and believed Evans-Jones would have been the one who made the change. (MLtr, pp. 172-173.)

3. Discovery and internal discussions; interview conversation part two

When asked if he ever discussed the \$20 million disparity with Tom Domich, Lopez stated he did not believe he had. Lopez reiterated he learned of the SPRF balance discrepancy from Becky Brown. He also stated that Brown never specifically indicated she had discussed the discrepancy with Ruth Coleman, although he was aware Brown and Coleman had a close working relationship and that Brown often briefed Coleman directly. (MLtr, pp. 64, 66, 127.)

Lopez stated he discussed the disparity numerous times with Dorothy Kroll, who later became chief accounting officer. They discussed that the disparity was why the SCO was not issuing fund maintenance awards for the SPRF. And it was based on that dialogue with Kroll that Lopez began explaining each year to Coleman why such SCO awards were not being received for the SPRF and OHV fund. (MLtr, pp. 66, 129-130; see also the next section 4.)

Lopez recalled that Freda Luan-Dun was the chief accounting officer when he arrived at Parks. Lopez initially stated he recalled discussing the discrepancy with Luan-Dun, and later stated that he did not recall. (MLtr, pp. 66-67, 128-129.)

Lopez recalled hiring David Saxby in the latter part of 2009 to assist the budget office as a retired annuitant. Lopez recalled discussing the discrepancy with Saxby while they were in the process of preparing the budget. (MLtr, pp. 131-132.)

When asked if there was anyone else with whom he had discussed the SPRF fund disparity, Lopez repeated that he recalled discussing it with former operations deputy director Ted Jackson. Lopez stated he also recalled discussing it with Ted Jackson's successor, former operations deputy director Tony Perez. Lopez stated that Perez had been involved in discussions in the fall of 2011 concerning the continuous appropriation request and where the money would come from to "seed that." Lopez stated he recalled advising Perez that there was a \$20 million cash balance available to fund the continuing appropriation request. When specifically asked if he described it as \$20 million in undisclosed cash, Lopez stated he did not recall specifically describing it as "undisclosed." He recalled describing it instead as an available cash balance

ted to “the accounting issue that we had.” Lopez stated he had provided the same sort of description of the funds to Ted Jackson. (MLtr, pp. 138-143.)

Lopez then confirmed that he never directly informed Jackson or Perez that the \$20 million being discussed were monies that had been reported to the SCO over the years and not reported to the DOF. Instead, Lopez confirmed it was consistently described as a prior accounting error that had resulted in a \$20 million dollar cash balance. Lopez concluded this area of inquiry by stating: “And by that time, it had been discussed so many times, I took it as everybody had that innate understanding of what it was.” (MLtr, pp. 144-148.)

4. Lopez’s conversations with Director Ruth Coleman

Lopez noted the Department had a very effective accounting team. He explained that each year the SCO issues awards to departments if they close their budgets on time and the balances reported in their fund condition statement and closing cash balance statement are within a certain percentage. Lopez indicated the SCO awards went straight to director Coleman, and each year she would ask why they did not receive awards for the SPRF and the OHV funds, the Department’s two largest funds. Lopez stated that he would explain to Coleman “that there was a difference between the fund balance and the cash balance,” and that on the SPRF side it was due to “the twenty million dollar error that had been made years back.” (MLtr, pp. 66-67.)

When asked if he clearly explained the basis of the error to Coleman, Lopez responded that he and Coleman had the same one-on-one conversation five times while he was head of administrative services: “Because every year the Controller sent the award directly to the Director, and I had to explain.” (MLtr, pp. 69, 71-72.)

Lopez’s repeated annual conversations with Coleman concerning the failure to receive SCO awards for the SPRF and OHV were revisited later in the interview. It was pointed out that Lopez stated he had explained to Coleman each year for five years why those awards weren’t received. Lopez was asked if he believed he had made it clear to Coleman that the problem involved \$20 million dollars in existing SPRF monies that were not reflected in the budget documents submitted to the DOF. Lopez’s response reflected uncertainty. He stated that “my impression is when I brought that forward to her, she’s like, oh, yeah, okay, I understand.” (MLtr, pp. 105-106.)

Continuing, Lopez stated he had tried to explain to her the discrepancies in both the SPRF and OHV funds, and that “the SPRF was the available twenty million.” (MLtr, p. 106.) This interviewer directly asked Lopez whether his understanding was that Coleman realized there was \$20 million in SPRF funds available that had not been disclosed. Lopez responded: “That was my feeling, my impression, yes.” Lopez then supported his opinion by noting they had discussed the continuous appropriation request and discussed using the \$20 million as “seed money for that continuous appropriation.” Lopez stated: “So she knew that there was money available.” (MLtr, p. 108.)

Lopez was asked why then, when each January passed with no SCO award for the SPRF, would Coleman need to ask him again for an explanation. Lopez responded that his sense was Coleman had so much going that when she received the SCO’s award report each year she always asked the same question, and he would re-explain it to her, and she would respond, “oh, yeah, that’s right.” This interviewer observed perhaps Lopez’s explanation was confusing to Coleman, or didn’t register as important. Lopez responded that yes, perhaps she simply disregarded it as “accounting issues, maybe.”¹⁰ (MLtr, pp. 110-112.)

Off-Highway Vehicle Fund Balance Disparities

Lopez stated he is not aware of any similar intentional failures to disclose monies held in the OHV fund. The DOF’s spreadsheet reflecting the fund balances reported to the SCO and the DOF for the OHV fund from 1993 through 2011 was reviewed. It was observed that there has been no consistent under-reporting of OHV monies to the DOF, and that in some years (2002, 2006, 2007, and 2010) tens of millions more was reported to the DOF than reflected in SCO cash balance reports. (MLtr, pp. 149-152; attached Exhibit A.)

Lopez confirmed the disparities in OHV fund balance reports are attributable to complex issues such as long-term, ongoing appropriations for land acquisitions that have not gone through, loans not being reported correctly, and gas tax credits. (MLtr, pp. 106-107.) Specifically, Lopez recalled a \$32 million dollar appropriation to buy property in Riverside County for a new OHV facility, and recalled that the land was never purchased. Lopez also

¹⁰ After interviewing some 39 current and former Parks employees, this investigator’s impression was that, despite the efforts of Manuel Lopez and Rob Boriskin to bring the more than \$20 million in undisclosed SPRF monies to Coleman’s attention, she may indeed have somehow failed to fully apprehend the issue.

recalled that there had been a number of loans of OHV monies to the general fund. Lopez stated that fund balances reported for the OHV are affected by timing issues, loans from the OHV fund, and other things totally out of his control. (MLtr, pp. 153-156.)

Concluding Comments

It was observed at the end of the interview that after Aaron Robertson became deputy director of administrative services in 2012 and learned of the SPRF fund balance disparity, Robertson reported the matter rather than electing to remain silent. Lopez was asked why he had not done the same. Lopez stated: “My sense was that I was hired to do what they asked me to do.” “And I was following the directions that I had been given.” (MLtr, pp. 167-168.)

Finally when Lopez was asked if he knew who had made the story of the monies public, Lopez stated he believed it was a combination of either Tony Perez or Ted Jackson, as “a way of trying to ensure that the director would not be reappointed.” (MLtr, pp. 169-170.)