

Summary of 8-27-12 interview of David Saxby

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

Work History and Background

David Saxby held a CEA1 position as assistant deputy director of administrative services at the Department of Parks and Recreation when interviewed August 27, 2012. He left that position, as planned, the next day. (David Saxby 8-27-12 interview transcript (DStr), pp. 4-5.)

Saxby worked for the State of California some 30 years, primarily with Caltrans and with Integrated Waste Management. He started in 1970 as a seasonal toll collector while attending UC Davis, and in 1971 received his bachelor's degree in political science. Around 1977, and after spending two years at the Department of Consumer Affairs, Saxby came to Caltrans' administrative headquarters as a program budget analyst, and was later a budget supervisor. He gained experience at Caltrans building budgets and preparing budget change proposals, and left and returned to the agency several times in the 1980s and 1990s. (DStr, pp. 6, 12-25.)

In 1998 Saxby was named chief financial officer at Integrated Waste Management. He returned to Caltrans in January 2000 as manager of the capitol outlay support. In that role Saxby supervised Manuel Lopez, who was then a Caltrans budget supervisor. Saxby and Lopez continued to work there together until Saxby retired in 2005. (DStr, pp. 33-37.)

Saxby thereafter worked at Caltrans each year from 2006 to 2009 as a retired annuitant. Meanwhile Manuel Lopez came to work at the Parks Department in 2005. In March 2010, Lopez hired Saxby to work as a retired annuitant in the Parks budget office, and Saxby then reported to chief budget officer Cheryl Taylor. (DStr, pp. 38, 46-47.)

Discrepancies in Balance Reports for the State Parks and Recreation Fund

1. Initial discovery and internal discussions

Saxby reports that, shortly after going to work in the Parks budget office, he became aware there was a discrepancy of \$20 to \$30 million between the balances reported to the Department of Finance (DOF) and the State Controller's Office (SCO) for the State Parks and Recreation Fund (SPRF). Saxby states he was hired to help Cheryl Taylor "tie out the budget," and around the end of April 2010 Taylor brought him the SPRF fund condition statement being prepared for submission to the DOF and pointed out that the balance did not match what was

reported to the SCO. Saxby reports that he then went to Lopez and asked: “What are we doing?” (DStr, pp. 54-58.)

When this interviewer asked if Saxby at the time thought the discrepancy was a “big thing,” Saxby replied: “It’s not a big thing.” When asked why, Saxby stated “It’s a fund condition statement,” and then explained:

“Caltrans's fund condition is a statement I’ve done for five years, is all over the place. No one really knows what that number is because of Finance changing direction, going from modified accrual to cash to all kinds of things. And in the end, like at Caltrans, the idea was to make it positive. That was the direction from Finance.”

(DStr, pp. 60-61.)

Saxby next confirmed his understanding that the accounting section’s balance reports to the SCO for the SPRF were correct. When asked again why the disparate report to the DOF was not a big issue, Saxby stated that the budget office was having difficulty providing reliable expenditure information. He stated that his first thought was to talk to Lopez and see what the discrepancy was all about. Saxby recalled informing Lopez that the SPRF cash balance reported to the SCO indicated about \$30 million, while the SPRF balance reported to the DOF indicated about \$10 million. (DStr, pp. 62, 65-66.)

Saxby reports that Lopez advised him the balance report discrepancy had been that way since before Lopez arrived at Parks in 2005, and that Lopez also stated that he believed a mistake had been made back in 2000 and was never corrected. Saxby states he did not inquire further about the uncorrected mistake, but stated to Lopez: “Okay, . . . so what do we do now?” “Do I bury that with a change in the prior [year adjustment]?” Saxby reports he also asked Lopez “how have you buried it before?” and that Lopez replied “we just changed the prior year [adjustment].” Saxby states he then asked Lopez: “shouldn’t we, like, have a strategy to move towards the real number and, like, adjust a little bit this year and next so that we’re - - in the third year we’re okay?” Saxby reports that Lopez said no, and when Saxby asked why, Lopez responded: “management is afraid if we show that there’s more money that the Legislature will take that and reduce our general fund.” Saxby indicated that Lopez did not specify who he was referring to as “management,” and Saxby assumed he meant then-director Ruth Coleman, then-chief deputy Michael Harris, and the deputy directors of the various sections. (DStr, pp. 67-71.)

Saxby reports that when he suggested the disparity be incrementally corrected over three years, Lopez told Saxby he had discussed it with Harris, and such a correction was not going to be done for fear the Legislature would cut Parks' general fund by an equal amount upon learning of the undisclosed SPRF money. Saxby states that Lopez also told him he could forget about it and not worry. Saxby accepted that response as he didn't see the discrepancy as a "biggie," and he was a retired annuitant trying to figure out the Parks culture. Saxby confirmed he did not believe the undisclosed money was being spent, although Lopez had told him it served as a safety net in case money was needed for emergencies. Saxby acknowledged that any such emergency expenditures involved risk since the money would have to be revealed. But he also suggested that risk might go away in an emergency and the discovery of extra money might even be seen as a heroic thing for which people would be grateful. (DStr, pp. 72-73, 87-89.)

Saxby reports that when he first discussed the matter with Lopez in 2010, Lopez indicated to Saxby only that Lopez had talked with Michael Harris about it. It was not until a month prior to the instant interview, and after news articles about the fund balance discrepancy came out, that Lopez advised Saxby that Ruth Coleman knew about the SPRF balance disparity, and that operations deputy director Tony Perez knew as well. (DStr, pp. 73-74, 76-78.)

Specifically, Saxby advised that Lopez told him a meeting took place in December 2010 after the DOF advised the Department its budget would be cut \$22 million and that the Governor wanted to close some parks. Lopez advised Saxby that the meeting was attended by Coleman, Harris, Lopez, and Perez, and that Perez said to the group, "why don't we give them the money?" and that Coleman and Harris said "no, we're not going to do that." (DStr, pp. 78-81.)¹

¹ In his interview, Lopez stated that former operations deputy directors Tony Perez and Ted Jackson were aware there was additional money tied to "the accounting issue that we had." But Lopez also stated he never specifically told Perez or Jackson there was a disparity in SPRF balance reports resulting in a cache of SPRF monies "undisclosed" to the DOF. (Manuel Lopez 9-28-12 interview transcript (MLtr), pp. 138-148.) Throughout his interview, Lopez unequivocally stated he discussed the disparity and how to deal with it with Harris. As to Coleman's understanding, Lopez stated he mentioned the disparity to Coleman every year for five years when explaining why the Department did not receive an annual award from the SCO for maintenance of the SPRF cash and fund condition balances, and that like Perez and Jackson, Coleman may not have understood the additional money as being more than an "accounting issue." (MLtr, pp. 69-72, 105-112.)

2. Discussions in 2011 with incoming budget officer Elsie Brenneman and interim deputy director of administrative services Kirk Sturm

Saxby recalled that Elsie Brenneman became the Department's budget officer in 2011 and brought the disparity in SPRF fund balance reporting to his attention shortly after she started. He recalled that Brenneman and Taylor had both asked "how come Finance doesn't see this difference?" After agreeing the money had been reported to the SCO and was therefore not all that hidden, Saxby told this interviewer: "if I were at Finance, I'd have known." (DStr, pp. 86, 112-113.)

Saxby noted that when Lopez left the administrative services deputy director position at the end of 2011, Kirk Sturm came in to fill the position. Saxby reports that Sturm said to him, "okay, I know nothing about budgeting, you have to explain all this to me." Saxby stated that he explained everything to Sturm, including the undisclosed \$20 million in the SPRF. Saxby reports that Brenneman also told Sturm about the undisclosed funds. (DStr, pp. 90-92.)

Saxby stated that after he and Brenneman discussed the undisclosed SPRF monies with Sturm, Saxby and Sturm met and discussed the issue with Harris. Saxby reports that Harris stated: "this has been here a long time, we're just going to keep it buried," and Harris also stated they should not talk about it. Saxby advises that as of November 2011, when this meeting between Saxby, Sturm, and Harris took place, the Department had already submitted a budget request to the DOF seeking some continuous appropriation spending authority over the SPRF. Saxby reports that Harris stated that if the Department obtained such continuous appropriation authority and managed it well, they could eventually start bringing in some of the undisclosed funds. (DStr, pp. 92-93, 102-103, 145-146.)²

3. Spending undisclosed money via continuous appropriation

Saxby was asked if he had any idea how a continuous appropriation would enable the Department to spend undisclosed funds. Saxby stated he did not know, and that it was just a thought and no plan to do so had been fully worked out. Saxby then suggested that when the SPRF generated a lot of revenue, the undisclosed surplus could be brought into play in small

² When asked to identify all those with whom he had discussed the \$20 million in undisclosed SPRF funds, Saxby identified Harris, Sturm, Lopez, Taylor, and Brenneman. Saxby indicated he has never been in meetings with any other deputy directors where the existence of undisclosed SPRF funds was discussed. (DStr, pp. 146-147.)

pieces. When this interviewer observed this would evidently require some type of deception such as over-reporting revenue, Saxby agreed that would be one way to do it, and then stated that no such specific strategy had been discussed. Saxby did agree, however, that spending undisclosed funds via the requested continuous appropriation authority would require some form of deception in the SPRF fund condition report to the DOF. (DStr, pp. 94-98.)

When asked if inaccurate reporting in a fund condition statement was common practice elsewhere, Saxby first stated that with general fund budgets there was no room to maneuver. However, Saxby advised that the SPRF fund balance disparity was not the first time he'd seen inaccuracies in DOF fund condition statements. Saxby stated: "I've seen it a lot, I mean, over time." Saxby then continued: "When they wanted some money out of Caltrans, it was more they told us what to put in there, and my Accounting Deputy almost had a heart attack." (DStr, pp. 100-101.)

When asked if he ever considered that failure to disclose the SPRF funds to the DOF was dishonest, and whether he ever considered taking the issue to another level or reporting it elsewhere, Saxby advised that he had not. He stated: "It was just part of the culture, I think, then I just accepted that it was a part of the culture." Saxby also noted that he wasn't surprised there was a disparity in the SPRF balances reported to the DOF and SCO. He stated that what did surprise him was there had been "no plan for it since 2000." (DStr, pp. 101-102.)

Saxby also advised that if had been making the decisions, he would have moved the money back in and reconciled the balances through prior year adjustments in the fund condition statements. He also stated he did not like the idea of "sneaking" any money in to spend, and noted there are accounting systems that track the money and one would have to do something to that system in order to "sneak" any spending, which would bother him. (DStr, pp. 104-105.)

4. Discussions in 2012 with accounting officer Dorothy Kroll and incoming deputy director of administrative services Aaron Robertson

Saxby recounted that in early February 2012, and shortly after Aaron Robertson came to the Department as deputy director of administrative services, Robertson forwarded to Saxby a full-page list of issues and questions accounting officer Dorothy Kroll had given Robertson. When asked if the \$20 million in undisclosed SPRF funds was an item on Kroll's list, Saxby stated "they probably were." (DStr, pp. 131-132.)

Indeed, items 19 and 20 of Kroll's one-page list of 23 "QUESTIONS THAT NEED ANSWERS (mostly from the Budget Office)," points out that what the budget office has reported to the DOF over the years as the SPRF balance is \$20 million dollars different "than what the financial statements indicate." Among other things, Kroll asked why the Department does this, why doesn't the Department seek authority to spend it "to keep our parks open," and "Isn't it time to come clean with DOF and save our parks?"³

Saxby stated he first went over the list with Kroll, and that while it had indications it contained items he was responsible for, he did not feel that he was. Saxby stated that sometime later, perhaps in March, he discussed the list with Robertson. Saxby did not, however, indicate that when he met with Robertson he specifically raised the issue of the \$20 million in unreported SPRF monies. Instead, Saxby stated that the issue was discussed by Robertson, Saxby, and Brenneman when Brenneman brought the issue to the table as she was working on the new fund condition statement. Saxby stated that he believes that conversation occurred at the end of March or sometime in April, and that he did not recall exactly. Saxby stated that Robertson would not have had a clue about the matter until Saxby had told him, and that once Robertson was informed Robertson "started pushing [the issue] to daylight." (DStr, pp. 132-134.)

5. Ruth Coleman's familiarity with the Parks budget

Saxby opined that Harris and Coleman were both very familiar with the budget process and observed that Coleman had worked at the Legislative Analyst's Office. Saxby stated that Coleman and Harris both handled the Department's legislative work in coordination with the budget officer. Saxby noted that Harris was involved every time there was a budget discrepancy or discussion. (DStr, pp. 142-143.)

Saxby advised that in preparing the budget, the fund condition statement was worked up by the budget manager, and the documents would then go to administrative services deputy director Lopez for approval. Saxby believes Lopez also took everything to Michael Harris. He stated he did not believe the document, which he described as technical, would have also been shown to Coleman. (DStr, pp. 158-159.)

³ Kroll originally sent the one-page, 23-question list as an attachment to an email directed to Kirk Sturm's personal email address on November 20, 2011. It is attached hereto as Exhibit K.

Saxby stated he did not know whether or not Coleman was aware of the \$20 million in undisclosed SPRF funds, and reported he had never been in a meeting with Coleman where the undisclosed funds were specifically discussed. Saxby opined it was possible Coleman was unaware of the funds, but also stated: “in my view, her and Michael [were] very close, and so I would be shocked if he would have not told her conditions annually.” (DStr, pp. 144-145.)

Additional Topics

1. Automated Pay Machine and Park Shower Revenues

Saxby stated he was aware a portion of revenue from automated park entrance pay machines and pay showers had been directed into a reimbursement account. He noted that by doing so the Department was able to spend the money without having reported it as normal fee revenue and then going through the budget appropriation process. He stated he had not studied state regulations to identify applicable rules, but agreed the correct thing to do under standard accounting principles is to report all such monies as revenue. (DStr, pp. 117-122, 126.)

Saxby advised that chief accounting officer Dorothy Kroll brought the matter to his attention in 2011, and stated that while directing a portion of such monies into a reimbursement account was technically incorrect, he did not believe anything needed to be done about it. He stated that it was “being spent on park stuff,” and that such expenditures helped generate more revenue by giving operations staff an incentive to generate that revenue. Saxby agreed it was creative, noted that it served the greater good, and agreed he “likes creative.” (DStr, pp. 124-125.)

2. Disparities in Off-Highway Vehicle Fund Balance Reports

A DOF spreadsheet reflecting disparities in the SPRF and Off-Highway Vehicle (OHV) fund balances reported to the DOF and SCO from 1998 to 2011 was reviewed with Saxby.⁴

⁴ The DOF provided this interviewer a spreadsheet on July 26, 2012, reflecting differences in balances reported to the DOF and SCO for the SPRF and OHV funds from 1998 to 2011. A \$49.8 million dollar discrepancy in the SPRF balance reports for fiscal year ending 2001 was indicated in that original DOF spreadsheet reviewed during Saxby’s interview. (DStr, p. 148.) It was later determined that the spreadsheet contained an error and overstated the SPRF adjusted cash balance at the close of the fiscal year in 2001 by \$27 million. DOF produced a corrected spreadsheet on September 7, 2012, which indicates that the discrepancy in SPRF balance reports to the DOF and SCO for FY ending 2001 was \$22.8 million and not \$49.8 million. (Exhibit A.)

Saxby stated that he had never worked on the balance numbers reported for the OHV fund. Saxby then opined that the OHV figures contained in the spreadsheet indicated to him that “whoever was doing the OHV fund doesn’t understand it.” (DStr, pp. 150-151.)

3. Hiring Saxby’s Son-in-Law into the IT Section

Saxby was asked about the hiring of his son-in-law, Paul Furry, into the IT section at Parks. Saxby stated he had delivered Furry’s résumé to the IT section. He stated that Furry went through the competitive hiring process of applying and testing for appointment as a staff services manager I. Saxby advised that Furry was interviewed by a panel and the hiring decision was made by Jason Summers in personnel. When asked the composition of the interview panel, Saxby reported that he participated on the panel “at the beginning,” along with Jason Summers and Paris Jackson from personnel. Saxby then stated: “And then I realized I needed to get out because he was in there.” (DStr, pp. 162-164.)

Saxby reports that he participated on Furry’s interview panel to the extent of asking questions, and that after everyone had been interviewed and things moved to the next level he advised Summers and Jackson that he could no longer be part of the process. When asked what made him realize it was not appropriate for him to be on the panel, Saxby responded: “When I could see that my son-in-law did really well.” When asked if it didn’t seem a little strange Saxby was on the panel to begin with, Saxby stated he did not believe so since the vacancies were under him. (DStr, pp. 165-167.)⁵

⁵ During her interview Cheryl Taylor questioned the propriety of Furry’s hiring. She stated that there were no vacant budget positions when Furry was hired, and that Fury never worked in the budget office and was assigned to the IT section instead. Taylor suggested the position was purportedly created in the budget shop, but then in fact assigned over to the IT section. (Cheryl Taylor 8-30-12 interview transcript, pp. 175-178.)