February 1, 2019

Hon. Holly J. Mitchell, Chair  
Joint Legislative Budget Committee  
1020 N Street, Room 553  
Sacramento, CA 95814

Attn: Ms. Jennifer Troia

Re: Supplemental Report of the 2018-19 Budget Act  
   Item No.: 3860-001-0001

Dear Senator Mitchell,

Pursuant to Supplemental Reporting Language of the 2018-19 Budget Act, attached please find one copy of the report prepared by the Central Valley Flood Protection Board as directed by Item Number 3860-001-0001.

If you have any questions or require any other information, please do not hesitate to contact me directly at 916/574-0291 or via e-mail at leslie.gallagher@cvflood.ca.gov. Thank you for your time and attention.

Sincerely,

Leslie M. Gallagher  
Executive Officer

cc: Ms. Erika Contreras, Secretary of the Senate (hard copy)  
Joint Legislative Budget Committee (e-copy to: Jennifer.Troia@sen.ca.gov)  
Legislative Analyst’s Office (e-copy to: Tina.McGee@lao.ca.gov)  
Office of the Chief Clerk of the Assembly (e-copy to: Amy.Leach@asm.ca.gov, Maria.Liranzo@asm.ca.gov, Dotson.Wilson@asm.ca.gov)  
Legislative Counsel Bureau (e-copy to: agency.reports@lc.ca.gov)  
CVFPB Board Members  
Ms. Krystal Acierito, Department of Finance  
Mr. Bryan Cash, Asst. Secretary Administration and Finance, Natural Resources Agency  
Ms. Cindy Messer, Chief Deputy Director, Department of Water Resources  
Mr. Duard MacFarland, Budget Officer, Department of Water Resources
Report to the Legislature
Central Valley Flood Protection Board
Revenue Generation Efforts

Submitted pursuant to Supplemental Report of the Legislature
Item No. 3860-001-0001 of the 2018-19 Budget Act

February 1, 2019

Central Valley Flood Protection Board
http://cvfpb.ca.gov
INTRODUCTION

As directed by Supplemental Reporting Language Item No. 3860-001-0001 of the 2018-19 Budget Act, the Central Valley Flood Protection Board (Board) staff has prepared an update on progress made for the following potential revenue generating programs:

1) Permitting and Inspection Fee Program
2) Noncompliance Penalties Cost-Recovery Program
3) Lease and Royalty Revenues Program
4) Sacramento San Joaquin Drainage District Assessment

Progress has been made to advance the revenue generating or cost-recovery programs in each of these areas. Additionally, Board staff continues to improve and streamline internal processes and reporting metrics to efficiently utilize the staffing and budget available to fulfill the Board's critical public safety mandate. However, there remains uncertainty as to whether these programs have the potential to generate sufficient revenue to support all of the Board's activities. Details of progress made to date on each of these programs follows below.

BACKGROUND

The Board, formerly known as the California State Reclamation Board, is one of the oldest State agencies still in existence. Created by the Legislature in 1911, the Board was given regulatory authority to maintain the integrity of the State Plan of Flood Control (SPFC) along the Sacramento and San Joaquin River systems, which includes approximately 1600 miles of levees, bypasses, weirs, pumps, and related facilities. The Board also manages the properties owned by the Sacramento-San Joaquin Drainage District (SSJDD), serves as the non-federal partner to the US Army Corps of Engineers on large-scale levee improvement projects, and is the State liaison between the property owners, residents, and agencies in the Central Valley and the federal government. Board meetings and workshops also provide a critical public forum for stakeholders to engage with the State on flood-related matters.

A century ago, the Board's capital outlay work to improve levees and other features was funded by assessment funds collected from properties within the SSJDD, and by general appropriations. Later, the Board's budget migrated to the Department of Water Resources (DWR), and the Board existed for many years as a division within DWR. In 2008, following the devastation of levee failures in Louisiana from Hurricane Katrina as well as California's payout of $500 million to the Paterno plaintiffs from a 1986 levee failure in Linda, California, the Legislature re-invigorated the Board, re-constituted it as the Central Valley Flood Protection Board and made it independent of DWR. Since 2008, the Board's administrative functions and some of the Board's programs remained with DWR through a Memorandum of Agreement (MOA) which is scheduled to be
updated in 2019. More recent budgets have included additional resources for the Board to support permit inspections and land management.

In January 2016, in response to Supplemental Reporting Language Item 3860-001-6052 of the 2015-16 Budget Act, the Board submitted a joint report to the Legislature outlining opportunities for funding Board operations outside of General Fund (GF) or one-time Bond Funds. Three potential revenue sources were identified in that report: charging a fee for permit review, reviewing and updating leases for land owned by the SSJDD, and reviving the Board's assessment authority. The previous year, through SB 753 (Steinberg), the Board obtained authority to levy fines in administrative encroachment actions.

In August 2017, the Board adopted the 2017 Central Valley Flood Protection Plan Update (Plan), which included a comprehensive look at funding the estimated $17 - $21 billion needed to adequately operate, maintain and improve the SPFC for the next 30 years, leveraging a combination of federal, State and local funds. The Plan outlines a long-term strategy to promote sustainability, which is updated on a 5-year cycle. It provides a programmatic vision for flood system improvements over time, and guides investments and policies to support comprehensive flood risk management actions locally, regionally and systemwide.

The Plan noted that even with substantial flood management progress in the last decade, there are still unacceptably high levels of flood risk for people and property in California's Central Valley, with risks to more than 1.3 million people, approximately $80 billion of infrastructure and other physical assets, and more than 500 species of native plants and wildlife which rely on the habitat found in the Central Valley. According to the Plan, annual funding for routine activities is $30 million. However, $130 million investment is needed annually to adequately operate and maintain the existing system. An additional $12-16 billion was identified as critical for capital improvements (improvements to existing facilities or new levees). Current funding comes from local, State and federal partners for capital projects. Ongoing maintenance is strictly a State-local obligation.

Since adoption of the Plan, the Board has aggressively moved toward implementation, most notably passing Board Resolution No. 2018-06, stating for the first time that operations and maintenance by all local maintaining agencies (LMA) must comply with their assurance agreements with the Board and with the US Army Corps of Engineers Operation and Maintenance Manuals. The Board has hosted many discussions with the stakeholders through monthly Coordinating Committee meetings and the Board's Local Funding Committee has been meeting with LMAs to assess their specific budgetary and permitting challenges.

Additionally, efforts will soon be underway along the Sacramento River to remove hundreds of unauthorized encroachments in conjunction with the Sacramento Area Flood Control Agency (SAFCA) for the Sacramento River East Levee (SREL) project. This effort will allow the SREL capital improvement project to move forward on a short
federal timeline. With the exception of the SREL project work, which is expected to be reimbursed by SAFCA, all of these activities are GF programs which provide value and reduce liability to the State as a whole.

REVENUE GENERATING PROGRAMS

With regard to the specific programs identified in Item No. 3860-001-0001, the Permitting and Inspection Fee Program is expected to eventually generate approximately $500k on average annually. The Noncompliance Penalties Cost-Recovery Program is not expected to generate significant funds in the short term, as the program emphasis is on early compliance and fines do not attach until later stages in the formal process. The Lease and Royalty Revenues Program generates an average of $800,000 annually. It should be noted that none of that lease revenue is returned to fund Board operations, but rather reverts to the GF pursuant to existing statute. A feasibility study for updating the Board’s assessment authority is underway and the 2018-19 Budget Act included $1.3 million for the Board for this effort. Further details about each program follow this summary.

PERMITTING AND INSPECTION FEES

Authorities

The Board has authority to collect fees through Water Code § 8535, which states:

“Consistent with Section 3 of Article XIII A of the California Constitution, the board, after holding at least one public hearing, may set and charge fees sufficient to cover the reasonable cost for the services it provides in carrying out its duties set forth in Sections 8502 and 8534, including, but not limited to, the issuance of and modifications to encroachment permits, inspections and enforcement of encroachments, and management and control of Sacramento and San Joaquin Drainage District property.” (Added by Stats. 2017, Ch. 26, Sec. 95. (SB 92) Effective June 27, 2017.)

Additionally, California Code of Regulations, Title 23, Division 1 (Title 23) describes collection of reasonable fees for inspections under §16(b): “The board may charge and collect a reasonable fee from an applicant to recover inspection costs, including staff or consultant time and expenses.”

Description

The Board manages and controls encroachments and activities that could potentially be injurious to the flood control system through issuing permits and conducting inspections. The Board has issued about 21,000 permits in the last 108 years. The review of permit applications and subsequent inspections during construction is an ongoing effort that has been historically funded by general fund appropriations.
Status of Implementation

In order to determine the actual cost-of-service, Board staff has been tracking staff hours spent on permitting activities since 2016. In early 2018, a focus group of stakeholders was convened by the Board staff to discuss fees and the Board held a workshop on fees in 2018. The Board drafted regulations to implement the fee program and the Notice of Proposed Regulations was published on September 21, 2018. During the 45-day public review period, no written comments were received. At the November 16, 2018 Board meeting, Board members commented on the package, and one positive comment was received from the California Central Valley Flood Control Association. None of the comments received necessitated a change to the proposed regulations which would trigger additional public review time.

To prepare for the regulation update, Board staff is currently modifying the permitting and inspection processes to integrate fee collection with minimal disruption. As noted above, the Board currently relies on DWR for certain business operations, and it is anticipated that the collection and depositing of fees will be administered by DWR’s Division of Fiscal Services, Governmental Billings Section. Costs for this service would be part of the overhead/assessment charges the Board is already subject to as part of its normal operations. The Board is currently updating the website and informing applicants about the upcoming fees. The Board expects to begin charging fees for permitting and inspection services later this year.

Amount of Revenue Generated Thus Far

No revenue has been generated as of the date of this report.

Estimated Annual Revenues in 2020-21 and Future Years

Permitting fees include revenue generated from issuing current permits and project authorizations, but will not initially address the outstanding 21,000 permits already issued. The plan for addressing past permits will include inspections and updates to existing permits, as needed, to bring each permit into compliance with current standards. Addressing past permits is expected to take several years, but will eventually ensure all existing encroachments are appropriately maintained and Title 23 compliant. Inspection fees include construction inspections on newly permitted encroachments, as well as routine inspections of existing encroachments.

Estimated annual revenues are based on assumptions of how many permits and project authorizations the Board will receive in a calendar year, and the type of permit being issued. Using data from July 2015 to June 2017 (State Fiscal Years 15/16 and 16/17) as a basis for the volume and type of permits, project authorizations, construction inspections, and routine inspections, the Board estimates the following revenue for each fiscal year:
<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Estimated Permitting Revenue</th>
<th>Estimated Inspection Revenue</th>
<th>Estimated Total Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020-21</td>
<td>$378,800</td>
<td>$131,000</td>
<td>$509,800</td>
</tr>
<tr>
<td>2021-22</td>
<td>$378,800</td>
<td>$144,100</td>
<td>$522,900</td>
</tr>
<tr>
<td>2022-23</td>
<td>$378,800</td>
<td>$163,750</td>
<td>$542,550</td>
</tr>
</tbody>
</table>

**Barriers to Implementation**

The requisite regulations have not yet been implemented and are currently awaiting final approvals. There are no anticipated barriers to adoption of the regulations at present, but some potential issues could arise with implementation.

**NONCOMPLIANCE PENALTIES COST RECOVERY**

**Authorities**

The Board has authority to impose penalties for non-compliance with enforcement actions pursuant to Water Code §§ 8700 - 8705 and Title 23.

**Description**

Since late 2014, the Board has had authority to levy fines for non-compliance with enforcement actions on a case-by-case basis. The Board can choose to pursue administrative or civil penalties. However, per Water Code § 8704.1(d), "a person or public agency shall not be subject to both civil and administrative penalties for the same violation."

Per Water Code §§ 8704-8704.1, administrative penalties may be imposed by the Board in the same manner as civil penalties, upon an enforcement hearing and issuance of an enforcement order. Administrative penalties may range from $500-$50,000 for a single violation. Civil penalties must be imposed by a court of competent jurisdiction and range from $500-$30,000. In addition, a penalty of $1,000-$15,000 per day may be imposed for intentionally and knowingly undertaking unauthorized activity and $6,000 per day may be imposed for intentionally or negligently violating any Cease and Desist Order or Enforcement Order issued by the Board.

**Status of implementation**

Shortly after the legislative changes effected by SB753, the Board quickly updated its Title 23 Regulations to implement this new authority. Since then, as with the permitting staff, enforcement staff has refined its cost accounting structure to accurately calculate the cost to the State of bringing the enforcement action forward and has updated the database to further account for the cost to the State. The cost of bringing the action is tracked from the first day an enforcement case is assigned to a staff member until
resolution. The recommended penalty type and amount is provided by staff to the Board during enforcement hearings for Board consideration on a case-by-case basis.

**Amount of Revenue Generated Thus Far**

Since inception of the program one enforcement hearing has been held, which resulted in a $76,000 Reimbursement Order levied against an individual who damaged a levee in the Sutter Bypass, requiring emergency repair work to be performed by DWR. There were no fines assessed in that case, and no assets have been located from which to collect to date. It is important to note that early, voluntary compliance is the goal of the program and staff diligently works with property owners to reach voluntary compliance as the most efficient path to resolution.

**Estimated Annual Revenues in 2020-21 and Future Years**

It is difficult to estimate cost-recovery from this program moving year-to-year. There are over 15,000 outstanding potential enforcement cases staff are reviewing to secure as much compliance as possible at the earliest stages possible. As reported to the Board in December 2018, enforcement staff closed 150 cases in calendar year 2018, and none required an enforcement hearing. It is likely that Board staff will not reach the stage of significant enforcement hearings subject to fines for several years.

**Barriers to Implementation**

This program is already in place and has been proven to function as anticipated as exemplified by the reimbursement order levied in February 2018. Using that matter as an example, the largest barrier to successful cost-recovery is the collection process, which can be expensive and lengthy depending on the type of assets owned by a respondent and the willingness of the respondent to pay the fines imposed. The value of the authority, however, is greater than its funding potential, for it gives the Board powers that have resulted in violators quickly coming to the table and resolving matters to avoid potential large penalties.

**ASSESSMENT DISTRICT**

**Authorities**

Water Code §8750, et seq., provides that the Board may levy an assessment upon any lands within the SSJDD. Existing statutes provide that the funds may be used for capital projects, and initially the assessments were collected to provide the State’s share of the cost to purchase easements and construct the SPFC. The Board has not exercised its assessment authority since the 1930s but, the possibility of using an assessment to raise funds to operate and maintain the SPFC was recognized in the 2016 Joint Report and in the Plan as a future potential funding source for ongoing operations and maintenance of the SPFC, provided the statutes can be updated.
Description

The Board would collect assessments from beneficiaries to manage the existing and proposed flood protection infrastructure and then administer those funds to the local maintaining agencies to perform operations and maintenance of the system. Because the existing process has not been used in more than 80 years, specifics of how a potential assessment district would function in the modern world has not yet been explored. In the 2018-19 Budget Act, the Board did receive dedicated funding for an SSJDD Assessment District Feasibility Study, which is underway.

Status of Implementation

Board staff has received $1.3M in dedicated funding and has drafted a scope of services for a study to determine the feasibility of the assessment. It is anticipated that the assessments would provide funding for maintaining existing infrastructure as well as capital improvement projects along the SPFC. It is not anticipated that these assessments would be available to fund Board operations.

Amount of Revenue Generated to Date

No revenue has been generated for operations and maintenance thus far.

Estimated Annual Revenues in 2020-21 and Future Years

No revenue is anticipated in 2020-21, but the Board anticipates having reasonably accurate estimates for annual revenues in future years once the feasibility study is completed.

Barriers to Implementation

Several potential barriers exist to implement any new assessment as a sustainable revenue source for the SPFC capital projects and operations and maintenance.

1) The current authorization does not permit assessments for operations and maintenance.

2) Many of the lands in the district are rural in nature with few structures. The debt service capacity of the land must be able to generate a substantial amount of revenue worthy of the assessment.

3) Determining beneficiaries and levels of assessment could prove challenging.

4) Land owners in the district are exploring self-assessment options. This additional assessment could be opposed by the land owners.
Suggestions for Addressing Those Barriers

The degree to which potential barriers are real barriers will become evident during the feasibility study. Significant outreach to the legislature and the public to communicate the value of the assessment is necessary. A legislative action would be required to modify the existing assessment statutes – at least to allow assessments for operations and maintenance.

LEASE AND ROYALTY REVENUES

Authorities

Water Code §8502 provides that the Board manages and controls all of the land and properties owned by the SSJDD. Currently the SSJDD holds 21,000 acres in fee title and over 201,000 acres in easements. The real property is primarily located in the Central Valley bypasses and leased for farming, natural gas extraction, or other purposes. Under Water Code §§ 8655-8679, the Board has authority to enter into agreements to lease SSJDD property and to collect lease and royalty revenues. DWR collects the lease and royalty revenues on behalf of the Board and deposits those revenues into the GF as required by current statutes.

Description

Real property services and property management activities of the Board include the following:

1) Real Property Acquisition and Conveyance
2) Leases, Licenses, and Temporary Entry Permitting

As noted above, SSJDD property is leased for multiple purposes, including traditional leases to California Fish and Wildlife, oil and gas leases, and one sand and gravel lease. Although highly variable due to the volatility of the sand and gravel business, these leases have generated an average of approximately $800,000 annually for the past seven years.

Status of Implementation

Lease and royalty revenue is currently being generated from multiple lease sources.

Amount of Revenue Generated to Date

The amount of revenue generated to date is based on the SSJDD current leases, many of which are in holdover status. The annual revenue for 2018 was approximately $720,000, with the average annual revenue over the last 7 years totaling approximately $800,000. The table below shows the last seven years of lease and royalty revenue.
Lease and Royalty Revenue ($thousand's)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Lease Revenue</td>
<td>90,000</td>
<td>227,000</td>
<td>401,121</td>
<td>1,629,338</td>
<td>234,522</td>
<td>1,212,245</td>
<td>632,320</td>
</tr>
<tr>
<td>Royalty Revenue</td>
<td>269,000</td>
<td>187,000</td>
<td>211,090</td>
<td>190,210</td>
<td>97,678</td>
<td>113,987</td>
<td>85,968</td>
</tr>
<tr>
<td>Grand Total</td>
<td>$359,000</td>
<td>$414,000</td>
<td>$612,211</td>
<td>$1,819,547</td>
<td>$332,200</td>
<td>$1,326,232</td>
<td>$718,288</td>
</tr>
</tbody>
</table>

The amount of lease revenue is highly variable and largely dependent on commodity process and the economy. Given the economic and market-sensitive nature of production, reliability and forecasting of these revenues can be challenging. In recent years this revenue has varied in amounts from $330,000 to $1.8 million.

Estimated Annual Revenues in 2020-21 and Future Years

The estimated future annual lease and royalty revenue is hard to predict. An internal audit is in progress assessing the status of leases and prioritizing renewal. This will provide the Board a more accurate estimate of potential revenue. It is expected that future revenue will increase by bringing leases current and securing new leases. Projections will become more accurate as leases are renewed.

Barriers to Implementation

Board staff has been reviewing the existing program and seeking opportunities to increase the value of the lease potential on existing properties. Over the years, a large majority of the Board’s leases have expired and are currently in holdover status. Additionally, the records of SSJDD properties were until very recently kept in paper files and not digitized, resulting in excessively long wait times and great expense to process any property-related transactions, including easements, acquisitions and leases.

Suggestions for Addressing Those Barriers

Board staff and DWR Division of Engineering (DOE) have been working together to ensure adequate attention is paid to the Board’s property management. DOE currently has management of the Board properties pursuant to the 2008 MOA. Over the past couple of funding cycles, the Board has secured funding for one dedicated position in DOE and has also created an internal position focused on property management. Between the Board and DOE, dedicated funding has been secured to complete the records update for the Board properties systemwide, with completion expected in 2019. It is expected that the update to the MOA with DWR will further clarify roles and responsibilities, with the Board taking over more of the management of its properties in future years.
CONCLUSION

The Board appreciates the opportunity to share with the Legislature the progress made to date to secure revenues for the State. The past decade has been one of growth and administrative improvements at the Board. It is our expectation that this trajectory will continue if appropriately funded. The Board has taken significant steps in the past three years to explore the programs that could result in revenue-generation or cost-recovery to the State, with some programs either already implemented, or in the final phases of development.

As the Board begins to implement permit and inspection fees, staff will obtain a more accurate and complete representation of available revenue to share with the Legislature in its 2020 report. In the interim, the Board requests and appreciates continued support from the Legislature now and into the future as we continue implementing the Plan, providing a public forum for stakeholders, and managing and overseeing the facilities of the SPFC and the activities of the LMAs who operate and maintain this critical piece of California infrastructure.

Respectfully Submitted:

Leslie M. Gallagher
Executive Officer
Central Valley Flood Protection Board

February 1, 2019