

**WRITTEN COMMENTS AND RESPONSES ON A MODIFIED ECONOMIC AND FISCAL IMPACT STATEMENT: STD 399 PLUS ATTACHMENT 1 (“MODIFIED STD 399”)
COMMENTS SUBMITTED BETWEEN APRIL 24, 2013 AND ENDING MAY 9, 2013**

CODES USED

- A Authority of Proposed Regulations
- Ne Necessity of Proposed Regulations
- Ct Clarity of Proposed Regulations
- Co Consistency of Proposed Regulations with existing law/regulation
- Du Proposed Regulations’ duplication of existing law/regulation
- DP Proposed Regulation comment dealing with changes in content to the corresponding Delta Plan policy/procedure
- O Proposed Regulation comment suggesting changes in wording of definitions or other language not verbatim from Delta Plan; other general responses
- S Statement of Reasons
- E Economic and Fiscal analysis or Cost Report
- Nr Notice of Rulemaking or general rulemaking process

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1. Bert Wilson	5/2/2013	<p>[T]he most grievous error is in omitting charges for the BDCP tunnels which will be incorporated into the Delta Plan. The document says: “...costs to the State or local agency proposing a covered action could be passed on to specific private businesses and individuals through assessments, rates, fees or other charges.”</p> <p>The Private Sector Cost Impacts you list are mostly unknown whereas you should be able to estimate the impact (“Beneficiaries Pay”) that the Delta Plan (including the construction of the twin tunnels) will have on all water rate-payers.</p> <p>This is necessary because of the private funding of the tunnels by the Association of State and Federal Water Contractors, the authorized funding authority that will provide the revenue stream to the Dept. of Water Resources to construct the tunnels.</p> <p>I am concerned that because this is not a state agency they can set rates of return on their investment that could be so high as to be considered usury! These rates should be known before any ground is broken. These rates should be part of the Delta Plan.</p>	E	<p>This comment does not address any change to the document under review, the Economic and Fiscal Impact Statement.</p> <p>The Council disagrees with this comment. The Delta Plan does not address or analyze the current BDCP proposal because it has not yet been adopted. When this occurs, Water Code § 85320 sets forth a process whereby the BDCP shall be considered for inclusion in the Delta Plan. The Department of Fish & Wildlife is tasked with determining whether BDCP meets the statutory Section called out by § 85320. If the Department so determines, the Council must incorporate BDCP into the Delta Plan. (Water Code § 85320(e).) The Department’s determination may be appealed to the Council (Water Code § 85320(e)), pursuant to the Council’s adopted appellate procedures. The Council will review any appeal to determine whether BDCP meets the requirements of Section 85320. For additional information relating the Council’s authority as it relates to BDCP, see Appendix G to the Delta Plan.</p>
2. California Water Research	5/9/2013	<p>Please put this into the administrative record.</p> <p>[The attached file appears to be a PowerPoint presentation by the Army Corps of Engineers on an Extended-Delta Hydrodynamic Model regarding sea level rise.]</p>	E	<p>This comment does not address any change to the document under review, the Economic and Fiscal Impact Statement.</p> <p>While we appreciate on-going modeling work in the Delta regarding sea level rise, there are no new issues raised.</p> <p>As requested, this submission will be made part of the administrative record.</p>
3. LA County Sanitation Districts	5/9/2013	<p>[T]he Sanitation Districts support implementation of the Delta Conveyance Facilities because the resulting significant improvements in the salinity of State Water Project (SWP) water would in turn reduce the salinity of recycled water. This would improve the Sanitation Districts’ ability to comply with Waste Discharge and Water Recycling Requirements issued by the Los Angeles and Lahontan Regional Water Quality Control Boards for recycling and surface water discharges from its water reclamation plants. Many potential users of recycled water express concern that irrigating with water with a higher salt content than other sources will adversely impact their plantings. Lower salinity recycled water will also greatly improve the feasibility and cost of implementation measures local agencies must take in accordance the State Water Resources Control Board’s Recycled Water Policy requirements associated with development of Salinity and Nutrient Management Plans. Reducing the regulatory burden on recycled water use and improving its quality will increase its use.</p> <p>One example of local salinity limits affecting two of the Sanitation Districts’ water reclamation plants, the Upper Santa Clara River Chloride Total Maximum Daily Load (USCR Chloride TMDL), is the result, in part, of the high chloride levels in SWP deliveries. The Sanitation Districts’ member agency, the Santa Clarita Valley Sanitation District, faces the expensive burden of providing advanced treatment to remove chloride from wastewater to comply with the TMDL for its recycled water discharges. The cost to comply with the USCR Chloride TMDL is expected to exceed \$100 million for a community of 200,000 and would increase the annual cost for wastewater treatment by over 40 percent despite the fact that the SWP water used by the community contains chloride levels that approach and sometimes have exceeded the chloride limit. We understand that implementation of the Delta Conveyance Facility would greatly reduce chloride levels to southern California including Santa Clarita. Such improvement might eliminate the need for advanced treatment facilities in Santa Clarita.</p>	E	<p>This comment does not address any change to the document under review, the Economic and Fiscal Impact Statement.</p> <p>This comment focuses on the expected benefits of reduced salinity in supply water as a result of implementation of BDCP, particularly for water treatment, recycling and reuse.</p> <p>The Delta Plan does not address or analyze the current BDCP proposal because it has not yet been adopted. When this occurs, Water Code § 85320 sets forth a process whereby the BDCP shall be considered for inclusion in the Delta Plan. The Department of Fish & Wildlife is tasked with determining whether BDCP meets the statutory Section called out by § 85320. If the Department so determines, the Council must incorporate BDCP into the Delta Plan. (Water Code § 85320(e).) The Department’s determination may be appealed to the Council (Water Code § 85320(e)), pursuant to the Council’s adopted appellate procedures. The Council will review any appeal to determine whether BDCP meets the requirements of Section 85320. For additional information relating the Council’s authority as it relates to BDCP, see Appendix G to the Delta Plan.</p>
4. San Luis & Delta-Mendota Water Authority, and State Water Contractors	5/9/2013	<p>The State Water Contractors and San Luis & Delta-Mendota Water Authority¹, collectively referred to herein as the “Public Water Agencies” submit this comment letter regarding the Modified Economic & Fiscal Impact Statement. The Public Water Agencies have previously commented on the cost analysis but to date these comments have not been addressed. The Public Water Agencies refer you to their join comment letters submitted on January 14, 2013 and April 22, 2013 and incorporate those comments in this letter. (See Exhibit “2.”)</p> <p>For the reasons stated in the Public Water Agencies previous comment letters, and because the comments remain to be addressed in the Modified Economic & Fiscal Impact Statement, the cost analysis still fails to comply with the law. To remedy this, the Modified Economic & Fiscal Impact Statement should be revised and re-circulated for public comment. We appreciate this opportunity to comment and stand ready to provide you with assistance if necessary.</p>	E	<p>This comment does not address any change to the document under review, the Economic and Fiscal Impact Statement.</p> <p>This comment does not raise new issues, but re-submits previous comments. Please see the Council Council’s responses to this commenter’s previous comments.</p>

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5. Local Agencies of the North Delta	5/9/2013	Local Agencies of the North Delta (“LAND”)1 previously submitted comments on the Rulemaking Package and Economic Analysis dated January 14, 2013 and April 22, 2013. While there have been some improvements, the Rulemaking Package is still not the least burdensome, effective alternative. For these and other reasons explained in previous correspondence, LAND continues to object to the adoption of the Rulemaking Package and the Delta Plan, as well as certification of the Delta Plan Program EIR by the Delta Stewardship Council (“Council”).	E	For the reasons set forth in the Initial Statement of Reasons (11/30/2012) and in Council’s response to comments received during the 45 and 15 day comment periods, Council believes that none of the alternatives considered or that have otherwise been identified and brought to the attention of the Council would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Council. Please see the Council’s responses to this commenter’s previous comments.
6. Local Agencies of the North Delta	5/9/2013	A. Estimated Private Sector Cost Impacts Item 1. The section fails to disclose that the Rulemaking Package will impact small businesses and California competitiveness, require new reporting requirements, and imposes prescriptive rather than performance based requirements. Each of these boxes (b., d., e. and f.) should therefore be checked and discussed.	E	Explanation for the exclusion of checked boxes in A.1. of the Economic and Fiscal Impact Statement are provided in Attachment 1 to the Economic and Fiscal Impact Statement and are discussed further by addressing comments 7 through 10.
7. Local Agencies of the North Delta	5/9/2013	b. Small Business Impacts The new regulations restrict all development to the growth areas of the legacy communities, and impose severe limitations on non-agricultural development, and housing development greater than 4 units. The Rulemaking will also increase direct and indirect costs on small businesses through increased reclamation district costs that must be paid by landowners and/or water users within a district to meet new flood standards and new analysis and reporting requirements for setback levees established by this rulemaking. Impacted small businesses include family farms, farm suppliers, farm labor and other service industries.	E	<p>First, the regulation applies to State and local agencies. Private businesses and individuals are not directly affected by costs of the regulation. However, the Economic and Fiscal Impact Statement does recognize that small business may indirectly incur costs to make a project consistent with a covered action or through assessments, rates, fees, or other charges. The costs of actions taken to comply with Delta Plan polices will be unique to the details of a covered action and cannot be known in advance. Therefore, while recognized, the total cost of the regulation to private business or individuals is unknown, and the total number and type of businesses impacted, including small business, is also unknown.</p> <p>Second, several policies either explicitly exclude cities, their area of influence, and unincorporated towns or incorporated alternative approaches to avoid or minimize impacts on small businesses in the Delta. For example, limitations on construction or development in the Delta (section 5010) specifically exempt “commercial recreational visitor-serving uses or facilities for processing of local crops or that provide essential services to local farms.” Also, section 5011 directs covered actions to avoid conflicts with existing land uses, including farming.</p> <p>Finally, the Council disagrees with the comment regarding costs incurred by reclamation district and local agency associated with new flood standards being passed along to local growers. The regulation does not include any new standards pertaining to levee design or maintenance activities that might be undertaken by reclamation districts. The regulation does require an assessment for the feasibility of setback levees, but this requirement is limited to specific areas identified in the regulation where such levees are most likely to provide significant habitat restoration benefits. In addition, it is up to the filing agency to determine if setbacks within the levee project are feasible, which includes financial feasibility. If setback levees are not deemed feasible, then no further action is required.</p>
8. Local Agencies of the North Delta	5/9/2013	d. California Competitiveness Increasing costs of producing specialty local agricultural products (e.g., tree crops, certain grape crops, dichondra, endive, and specialty organic crops) will affect California competitiveness. Increased reclamation district and local agency costs to comply with new flood standards and reporting requirements established by this rulemaking must be funded by these growers, making California less competitive.	E	<p>The regulation is not expected to impair overall California competitiveness. It does not follow that any cost imposed on a business will reduce California’s competitiveness with other states. Benefits from a regulation must also be considered to the extent they are related to the cost. Council believes that Regulations would provide long-term benefits in protecting agriculture, restoring the Delta ecosystem, improving water supply reliability, maintaining and enhancing settings for outdoor recreation and tourism in the Delta, and improving flood protection. The benefits would improve the ability of California businesses to compete, reducing costs to produce goods and services by reducing the potential cost to business from water supply shortages. While the estimated reduction in business costs to produce goods and services is unknown, Council believes that anticipated benefit could outweigh the indirect cost of certification of a proposed covered action and the steps necessary for a covered action to comply with the regulation.</p> <p>Normal agricultural operations within the Delta, including those mentioned in the comment, would generally not be covered actions. It is true that consistency-related costs to a largely agricultural reclamation district would if possible be passed to growers. The Delta Reform Act and the proposed regulation exempt from covered action status the operations and maintenance activities of such districts, but levee construction or improvement projects, for example, would not be exempt, and</p>

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				<p>the district would pass consistency costs to growers (or apply for reimbursement to the Commission on State Mandates, as provided in the Delta Reform Act). However, as previously mentioned, it does not follow that any cost imposed on a business will reduce California's competitiveness with other states. Benefits from a regulation must also be considered to the extent they are related to the cost and Council believes that anticipated benefit could outweigh the indirect cost of the regulation.</p> <p>Finally, the Council disagrees with the comment regarding costs incurred by reclamation district and local agency associated with new flood standards being passed along to local growers. The regulation does not include any new standards pertaining to levee design or maintenance activities that might be undertaken by reclamation districts.</p>
9. Local Agencies of the North Delta	5/9/2013	e. Reporting Requirements The rulemaking increases reporting requirements by forcing reclamation districts to demonstrate that specific new flood standards are met and to analyze the feasibility of setback levees along the Sacramento River and elsewhere in the Delta.	E	<p>No reporting requirements are imposed on the private sector. The regulation applies to State and local agencies only.</p> <p>Furthermore, the regulation does not "force reclamation districts to demonstrate that specific new flood standards are met." In fact, the regulation does not include any new standards pertaining to levee design or maintenance activities that might be undertaken by reclamation districts. The regulation does require an assessment for the feasibility of setback levees, but this requirement is limited to specific areas identified in the regulation where such levees are most likely to provide significant habitat restoration benefits. In addition, it is up to the CEQA lead agency to determine if the setback levee project is feasible, which includes financial feasibility. If setback levees are not deemed feasible, then no further action is required.</p>
10. Local Agencies of the North Delta	5/9/2013	f. Prescriptive Instead of Performance Requirements The majority of the standards imposed by this rulemaking are specifically prescriptive, such as the prescriptive levee standards, requirements for maximum number of dwellings, specific habitat elevations and locations, and set back levee locations, each without regard for consideration performance based criteria	E	<p>All of the Delta Plan policies were developed through an extensive public process during which many alternatives were suggested and discussed. Alternatives included some that were more prescriptive and potentially burdensome and some that were less so. The range was embodied in a set of formal alternatives that were analyzed in the Draft PEIR. The Council considered all of these and selected the policies that it believes achieve flexibility and cost-effectiveness, implementing performance instead of prescriptive standards when possible, while meeting the goals and mandates of the Act.</p>
11. Local Agencies of the North Delta	5/9/2013	Item 2. The section fails to identify specific impacts that will result from the Rulemaking on businesses. At the very least, specific classes of impacted businesses should be identified. The answer provided – "Businesses directly involved in covered actions and businesses indirectly affected by local agency's cost recovery" – are essentially every business located in the Delta and any business that would locate in the Delta in the future that would engage in a covered action. The argument that local agency costs as a result of the implementation of the Plan are "indirect" is also unsupported. Direct costs will be placed on local agencies for determination of consistency and compliance with the Plan. These costs are then are passed on to the ratepayers, many of whom are businesses.	E	<p>STD 399 acknowledges that costs will occur to businesses, but it does not identify specific impacts or costs because those will depend on future, unknown covered actions. STD 399 does not state that costs to local agencies are "indirect". The costs of actions taken to comply with Delta Plan polices will be unique to the details of a covered action and cannot be known in advance. The potential range of agency costs for consistency compliance is estimated in the Economic and Fiscal Impact Statement, based on what the Council believes are reasonable assumptions. The portion of agency costs that is passed onto private business or individuals through assessments, rates, fees, or other charges, and the way such costs are spread among agency constituents and ratepayers, will vary by agency and is unknown. Therefore, the total cost of the regulation to private business or individuals is unknown, and the total number and type of businesses impacted, including small business, is also unknown.</p>
12. Local Agencies of the North Delta	5/9/2013	Item 3. The section fails to identify specific impacts as a result of this Rulemaking as required, including the number businesses that will be created, which should be "none." The significant restrictions on projects deemed covered actions would impair businesses and lead to losses that must be disclosed.	E	<p>The number of businesses and jobs created or eliminated is uncertain. However, the impacts to business are discussed qualitatively. See previous response to comment 11.</p> <p>As explained in the Cost Analysis, Council believes that the regulation would provide long-term benefits in protecting agriculture, restoring the Delta ecosystem, improving water supply reliability, maintaining and enhancing settings for outdoor recreation and tourism in the Delta, and improving flood protection. These benefits will be spread through much of the state and will improve the state's long-term outlook for business and jobs, improving its ability to maintain and attract business and a skilled workforce.</p>
13. Local Agencies of the North Delta	5/9/2013	Item 5. The section fails to identify specific impacts as a result of this Rulemaking as required, including identification of the number businesses that will be created, which should be "none." The statement that the Plan "could induce net job creation" is not substantiated. If the Council intends to refer to jobs created by construction of the BDCP tunnels, this assumption should be disclosed. Local job losses due to implementation of the Plan and construction of the BDCP tunnels should also be disclosed. The idea that some temporary "construction and restoration jobs" would be sufficient	E	<p>The number of businesses and jobs created or eliminated is uncertain. However, Council believes that on balance the net effects to the State, while uncertain, could be positive. Further discussion of potential effects on jobs is provided in the "Cost Analysis for Proposed Delta Plan Regulations" (Delta Stewardship Council, 2013). The potential for net job creation would result from The regulation providing long-term benefits in protecting agriculture, restoring the Delta ecosystem,</p>

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		to replace or somehow offset local sustainable agriculture over the long term is unsupported.		improving water supply reliability, maintaining and enhancing settings for outdoor recreation and tourism in the Delta, and improving flood protection. BDCP was not used to estimate net job creation.
14. Local Agencies of the North Delta	5/9/2013	Item 6. The section misidentifies the specific impacts as a result of this Rulemaking as required. Specifically, the claim that the impacts would be "outweighed" from statewide perspective is meaningless. The impacts to the Delta are severe and the statewide benefits are uncertain. This statement should not be made if it cannot be substantiated.	E	The regulation is not expected to impair overall California competitiveness. Council believes that the regulation would provide long-term benefits. The benefits would improve the ability of California businesses to compete, reducing costs to produce goods and services by reducing the potential cost to business from water supply shortages. While the estimated reduction in business costs to produce goods and services is unknown, it is anticipated that this benefit could potentially outweigh the indirect cost of certification of a proposed covered action and the steps necessary for a covered action to comply with the regulation. The analysis did not assert that benefits would outweigh costs. The "Cost Analysis for Proposed Delta Plan Regulations" (Delta Stewardship Council, 2013) contains the data and assumptions used to estimate the potential range of costs.
15. Local Agencies of the North Delta	5/9/2013	B. Estimated Costs Item 1. This section (items a.-c.) fails to identify any specific costs as a result of this Rulemaking, however somehow is able to derive a total range of costs in item d. As commented previously, the analysis behind the range provided in item d. must be disclosed.	E	The costs of actions taken to comply with Delta Plan polices will be unique to the details of a covered action and cannot be known in advance. However, in general the estimated total annual statewide dollar costs that businesses and individuals may incur to comply with this regulation range from \$5.8 to \$8.4 million. This range is based on what Council believes are reasonable assumptions about future covered actions; the "Cost Analysis for Proposed Delta Plan Regulations" (Delta Stewardship Council, 2013) contains the data and assumptions used to make this estimate.
16. Local Agencies of the North Delta	5/9/2013	Item 2. This section now identifies possible impacts on the construction industry, but specific impacts, as well as impacts on "all industries," are not explained.	E	Neither the magnitude nor the share of such costs can be estimated by industry with any precision for the same reasons the number of businesses impacted cannot be estimated. Direct costs are to state and local agencies. The way that those costs are spread among businesses and individuals will depend on the specific future covered action and on the cost recovery mechanisms of the agency. See response the comment 11.
17. Local Agencies of the North Delta	5/9/2013	Item 4. This section states that there will not be any new housing costs. But the section in item 2 states that the construction industry will be impacted. This lacks internal consistency and calls the veracity of the submission into question. If the construction industry is impacted, housing costs will also be affected. This impact must be disclosed.	E	It is indicated in the Economic and Fiscal impact Statement that no significant direct impacts on housing costs are likely to occur from implementation of the regulation. The Cost Analysis explained the rationale for this conclusion. The construction industry could be affected in both positive and negative ways. Construction includes much more than housing construction. The analysis acknowledges that local agency costs recovered through permit fees would fall more on businesses that pay those fees, such as land development businesses. That is a different issue than the net effect on housing costs from a statewide perspective – the two conclusions are not inconsistent.
18. Local Agencies of the North Delta	5/9/2013	Form STD 399 and the entire Cost Analysis continues to be inadequate and does not comply with Government Code section 11346.5, among other requirements. Major costs are ignored entirely and other costs are misstated. In addition, the Rulemaking file provided for public review does not include "copies of the calculations and assumptions leading to dollar estimates" in compliance with instructions adopted by the Department of Finance.	E	Council disagrees, and believes that the cost analysis and STD 399 provide a reasonable assessment of the costs of implementing the proposed regulation. For the reasons given in those documents, some costs are quantified, some are described but not quantified, and some are expressed as a range or by use of examples. The text quoted in the comment expresses what the Department of Finance requests for its own review; it is not a requirement for public review under the Administrative Procedures Act. Nevertheless, the "Cost Analysis for Proposed Delta Plan Regulations" (Delta Stewardship Council, 2013) contains the data and assumptions used to make the quantified estimate of cost. The modified Cost analysis and STD 399 were provided to Department of Finance and will be included in final form in the final rulemaking record submitted to the Office of Administrative Law.
19. San Joaquin County Board of Supervisors	5/9/2013	As a response to the Delta Stewardship Council's Modified Proposed Rulemaking Documents referenced above, San Joaquin County comments that those documents are vague, confusing and internally inconsistent. Moreover, they are not clearly understandable as required in the rulemaking process. While much boilerplate and background language is used, and the documents are replete with conclusionary statements, there is little in the way of clearly articulated calculations which would enable the ordinary reader to discern how the economic, fiscal and mathematical conclusions were derived. This prevents the ordinary reader from analyzing the validity of the conclusions and comparing these documents with earlier versions of the same documents. Substantial changes were made between the two versions of the documents but there are no detailed economic or fiscal assumptions, facts, and calculations which lead to or justify the conclusions. Accordingly, San Joaquin County objects to the documents referred to above and requests that appropriate steps be taken to	E	Council disagrees, and believes that the STD 399 is clear and accurately describes the fiscal and economic information required. The "Cost Analysis for Proposed Delta Plan Regulations" (Delta Stewardship Council, 2013) contains the data and assumptions used to make the quantified estimate of cost in the STD 399 and were made available for review during the 45-day and initial 15-day public comment periods. The modified "Cost Analysis for Proposed Delta Plan Regulations" and STD 399 were provided to Department of Finance for review and approval and will be included in final form in the final rulemaking record submitted to the Office of Administrative Law. (*This letter was post marked 5/10/13)

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		ensure those documents are revised to meet the requirements of the rulemaking process.		