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May 9, 2013

**SENT VIA EMAIL (modifiedrulemakingprocess399.comment@deltacouncil.ca.gov)**

Ms. Cindy Messer  
Delta Plan Program Manager  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

**RE: Modified Economic and Fiscal Impact Statement: STD 399 and  
Attachment 1 Cost Analysis**

Dear Ms. Messer:

Local Agencies of the North Delta (“LAND”)<sup>1</sup> 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”).

As background, LAND made a formal request, through its technical consultant, during the original 15-day comment period (ending April 22, 2013) for provision of the final modified Economic and Fiscal Impact Statement (STD 399). A response was provided 5 days after that request that the material would be available in hard copy format only at the Council’s office. The day after the comment period closed, the public was notified that there would be an additional 15-day comment period (ending May 9, 2013) for comments solely on that document.

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<sup>1</sup> LAND is a coalition comprised of reclamation, water and levee maintenance districts covering about 100,000 acres in the northern geographic area of the Delta. LAND participants include: Reclamation Districts 3, 150, 307, 317, 349, 407, 551, 554, 556, 563, 744, 755, 813, 999, 1002, 2011, 2067 and the Brannon-Andrus Levee Maintenance District. Some of these agencies provide both water delivery and drainage services, while others only provide drainage services. These districts also assist in the maintenance of the levees that provide flood protection to homes and farms.

LAND had specifically raised issues pertaining to the Cost Analysis with Council staff in two meetings because of the need to modify the STD 399 and its attachment due to what appeared to be errors in description and content that needed to be reconciled. Despite concerted efforts to bring the inadequacies of the Cost Analysis and supporting information to the attention of the Council and its staff, LAND's concerns have still not been addressed. As described in more detail below, the Cost Analysis continues to be poorly substantiated, is in some cases directly contradictory, and claims postulated statewide benefits as somehow negating permanent local costs.

### **Specific Comments on Economic Impact Statement STD 399 (by Item)**

#### **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.

##### **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.

##### **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. 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.

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.

**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.

**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.

**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 to replace or somehow offset local sustainable agriculture over the long term is unsupported.

**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.

**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.

**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.

**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.

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For these reasons, and those reasons previously described, 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.

Thank you for considering these comments.

Very truly yours,

**SOLURI MESERVE**  
A Law Corporation

By:   
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