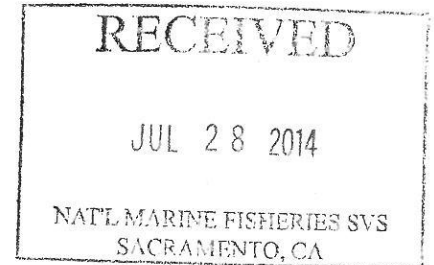


**FRIENDS OF CLARKSBURG SCHOOLS**  
**dba Delta Elementary Charter School**

P.O. Box 303  
Clarksburg, CA 95612

July 28, 2014

BDCP Comments  
Ryan Wulff, NMFS  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814



Re: Comments to the Bay Delta Conservation Plan Draft EIR/EIS

Dear Mr. Wulff and the BDCP Leadership and Comment Teams:

This letter constitutes the formal comments to the Draft Environmental Impact Report and Draft Environmental Impact Statement, issued November 2013 (the "**Draft EIR/EIS**") for public comment.

Throughout all of these comments, when impacts and/or effects are described or identified in any way, such impacts are to be deemed significant impacts for purposes of CEQA analysis, and such effects are deemed adverse effects for purposes of NEPA analysis.

**Comments Regarding**

**Background and Environmental Justice Chapter 28 of the EIR/EIS  
Impact on the Learning of Children in Meaningfully Greater Minority and  
Low Income Communities such as Clarksburg**

The Bay Delta Conservation Plan (Nov. 2013) ("**BDCP**") proposes to dramatically alter the way in which the Delta Elementary Charter School ("**DECS**") meets its mission of delivering the finest education possible for its students meeting all state standards with a special emphasis on agriculture, music, art and project based learning. Its agricultural program in particular relies on the health of the local Clarksburg Ag community which is an integral part of making the Ag education happen at DECS. DECS provides this education to the 384 students it serves. (BDCP contains an erroneous enrollment figure which should be corrected – citation given later in this comment letter.) DECS is located in Clarksburg in the Delta. Clarksburg, Hood and Courtland are three Delta communities defined in the Draft EIR/EIS Chapter 28 Environmental Justice 28.2.1.3 "Hispanic Residents" lines 39 and 40 as amongst "the small towns along the Sacramento River" where "meaningfully greater proportions of Hispanic residents are present". DECS is a Clarksburg "Public School" funded almost exclusively with public funds. It educates all its students tuition free.

Chapter 28.5.8.7 line 1 – 15 summarizes Noise issues and resolutions with the following conclusion (underlining is added for emphasis): “Chapter 23, Noise, identifies mitigation measures that would reduce noise and vibration effects.

Mitigation Measure NOI-1a: Employ Noise-Reducing Construction Practices during Construction

Mitigation Measure NOI-1b: Prior to Construction, Initiate a Complaint/Response Tracking Program

Mitigation Measure NOI-2: Employ Vibration-Reducing Construction Practices during Construction of Water Conveyance Facilities

In addition, the environmental commitment to develop and implement a Noise Abatement Plan would reduce these effects (Appendix 3B, Environmental Commitments). Although these mitigation measures and environmental commitment would be available to reduce these effects, it is not anticipated that feasible measures would be available in all situations to reduce construction noise to levels below the applicable thresholds. The effect of exposing noise-sensitive land uses to noise increases above thresholds is considered adverse. Although mitigation measures are available to address this temporary effect, because the noise and vibration effects would occur in areas with meaningfully greater minority and low-income populations, this represents a disproportionate effect. This effect is considered adverse.”

The conclusion is that this impact represents a disproportionate effect and is adverse. While there was a passing mention of “schools” in the impact section, you failed to analyze the sound impact of construction noise on the learning of various categories of students of at least seven years of enormous amount of pile driving strikes each day at each intake facility. DECS is ½ mile from Intake #2. This is a very significant impact and should not have been neglected in the EIR/EIS. The pulsating noise from pile driving during the construction of Intake #2 will have a significant negative impact on the educational environment for students at DECS. The incessant pulsating noise to unacceptable levels during the school day will drastically impact their ability to attend to instruction and make academic progress. The distraction that this level of noise will cause will require constant teacher redirection which will decrease both time on task and instructional time overall. In addition to impeding the learning of typically developing students, the noise caused by the pile driving will have a profound effect on students with disabilities. At our school we have students with Autism Spectrum Disorders, Attention Deficit Disorders as well as students with other learning disabilities. Often, these students have sensory processing disorders and have difficulty being able to regulate their senses in the face of drastic change such as the spiking of noise levels with each pile driving strike. In addition, it is often difficult for students with these disabilities to attend to and focus on instruction in optimal environments, let alone when their senses are being overloaded by the proposed level of pulsating noise from seven plus years of pile driving ½ mile from the school. It should also be known that there are two other public schools in Clarksburg (Clarksburg Middle School & Delta

High School) that will be similarly impacted. While we do not speak for these schools, the impact on the learning of the children in these schools should be analyzed as well. It is our professional opinion that pile driving 1/2 mile and more from DECS will significantly reduce the ability of our students to concentrate on their studies and progress in their learning and even more adversely impact those students in our population who have learning disabilities that make concentration a real challenge without 7 years of pile driving 1/2 mile away! We believe that it may be so adverse as to make functioning as a school impossible during the 7 year construction period.

We contend that the conclusion in the BDCP underlined above related to "feasibility" of mitigations is completely unacceptable. It indicates that mitigating for these impacts won't be done as they are not feasible. It should be noted that the costs for BDCP have been estimated from a low of \$16 billion in the document to other estimates of over \$40 billion from various sources. That is a very broad cost range as well as being huge at either end. All elements necessary to achieving the goals of BDCP are accommodated even if it adds a few more billion dollars to the cost. However, a completely different standard is utilized when considering the mitigation of BDCP impacts (indicating that solving a large number of the problems BDCP causes isn't feasible and therefore won't be done). While those putting forth the BDCP, continue to contend that the residents and businesses in the Delta will benefit from BDCP, local residents and farmers many of whose families have made the Delta what it is today over as many as seven generations who have spoken at the vast majority of public hearings conducted over the last 5 or so years indicate quite the opposite. Accordingly, if the vast majority of the benefit from the BDCP will be outside of the Delta in the southern part of the state, and if it is so critical to be done for the good of those in the south, then the least that can be done is to make sure that citizens, businesses and farmers in the Delta are made whole from ALL the negative impacts of the project. And further, actually indicating in BDCP that it is assumed that many of the residents in Hood and other places close to facilities to be built may simply have to abandon their homes and not be compensated is not acceptable either. To do this is to deprive one group of people their property without compensation for others who then don't have to pay their fair share of the true cost of the BDCP.

In summary for this section, I ask that the standards used to determine what mitigations "are not feasible" be revisited and ensure that there is appropriate and adequate budget in BDCP to compensate ALL of those who will be deprived of the use of their property not just those that experience the legal "taking" of their property (being under a physical Intake Station that has to be taken under eminent domain.) More specifically an approach that should be considered follows: if the impacts of BDCP are not feasible to be mitigated for in a certain area and are within an area of unacceptable impact that would reasonably cause someone to leave their homes just to be able to live during the 7 year pile driving construction period or period of unacceptable impact, then they should

be able to opt into having their property taken by eminent domain. specified proximity outright or rendering it unusable. If this means compensation for “takes” outside of the normal standards for eminent domain then that must be done to not deprive property owners of the enjoyment of their property rights.

As it relates to DECS, we propose a solution to the sound problems caused by BDCP over a large number of years which is to build another school for use during the seven year pile driving construction period close by that would be sound proof to the extent of not having the pile driving increase the sound in the class room or equivalent measures.

The mission and purpose of DECS is to provide a quality education to its students. In order to meet this mission and purpose DECS relies upon a number of existing physical and economic facts, including:

1. A system of roads and travel routes for bringing students to DECS as well as suppliers to bring purchased materials to the school;
2. The maintenance of existing levees and flood protection to reduce the risk of floods and the damage to DECS cause by inundation by water.

A number of State and federal entities are discussing formulating various devices, strategies, policies, habitat conservation plans, reports and other procedures (together, “Plans”) which appear to have the potential to significantly and seriously disrupt or even prevent the DECS from accomplishing its mission and purpose by alteration of the physical and economic facts listed above. The BDCP is one example of one of these Plans currently under consideration.

This letter constitutes the formal comments to the Draft Environmental Impact Report and Draft Environmental Impact Statement, issued November 2013 (the “**Draft EIR/EIS**”) for public comment.

Throughout all of these comments, when impacts and/or effects are described or identified in any way, such impacts are to be deemed significant impacts for purposes of CEQA analysis, and such effects are deemed adverse effects for purposes of NEPA analysis.

### **Comments Regarding Groundwater**

Chapter 8 does not appear to address changes in water quality upon DECS operations. Poor water quality in groundwater, is believed to significantly and seriously deteriorate and negatively affect the efficiency of water use most importantly as drinking water in the school. The EIR/EIS must fully analyze serious and significant impacts and

effects arising from changes in water quality upon DECS operations in order to be complete.

DECS relies to a great degree on groundwater through an existing well located on school property. The well supplying DECS water is within one-half mile of the project's #2 water intake pumping station. Chapter 7 purports to analyze the significant and serious effects and impacts because of changes in groundwater as a result of the project alternatives.

Chapter 7 focuses almost exclusively on the changes in the level of groundwater in and around both the Delta and the State of California as a result of the project alternatives. However, Chapter 7 fails to analyze or discuss the quality or quantity of ground water available or used by existing groundwater users as either impacts or effects as a result of any of the project alternatives. Further, it fails to provide a mechanism for an unbiased testing of water quality before the project commences so there will be a benchmark against which to measure the ultimate impact.

Specific to DECS, various project alternatives, if not all project alternatives, fail to analyze the significant and substantial impacts or effects of lowered groundwater tables, and thus failures or significant or substantial loss of access to water.

### **Comments Regarding Socioeconomics**

Chapter 16, discussing the Socioeconomics of the Delta, founds its analysis in large and significant part on the thinking and belief, without evidence of this belief, that the "rural communities" of the Delta are the towns of the Delta, the collection of improvements lying within the historic townships in the Delta. The language set out at page 16-3, lines 8-10 is an important example of this thinking.

In truth, the Delta communities are composed of both the townships *together with* their surrounding agricultural lands, each in symbiotic relationship with the other. In the Clarksburg area this truth is illustrated by the almost weekly meetings, gatherings, two annual district parades, three annual community dinners at the district firehouse, two garden clubs, a boy scout troop that has consistently produced for many years one of the greatest number of Eagle Scouts on an annual basis in the United States of America, together with innumerable events at the schools, church, library, and with other community groups, all bringing together residents of both the town area of Clarksburg with the residents outside the town area, into one cohesive single community unit bound together with unified and common values, united traditions, and family histories going back on the same land as far as seven generations ("**Community Cohesion**").

The Clarksburg community is also characterized by an important multi-cultural history. Whether it is the example of farmers who during the Second World War paid the taxes on the lands and building of their fellow Japanese farmers so they would not lose their land during internment, protection of the historic Japanese School, or the example of German POWs choosing to remain in the Delta upon their release in 1945, the Portuguese social hall (in the Lisbon District), the residents from Holland, in the area with the same name, or the large Hispanic population which participates in the life of the Delta, these facts and more demonstrate that the Delta community and its social fabric is not divided along the lines of township vs. non-township.

The demographic data set forth for the Delta portion of Yolo County beginning at page 16-7, line 317, to page 16-8, line 13, in the information listed for West Sacramento fails to recognize that only a part of West Sacramento lies within the Delta. The numbers offered for West Sacramento mislead because those numbers describe the whole of West Sacramento, not the Delta portion of the city. The Draft EIR/EIS is inaccurate and misleading to the extent that data derived from outside the Delta is offered as analysis of the Delta. Data should be limited to in-Delta residents, population, employment, etc. This same comment applies to cities and other areas which lie partly within the Delta, but the data for which is given for the entire city or area, not just the portion of the city or area which lies within the Delta.

At subsection 16.2.3.5, beginning at page 16-37, line 24, and throughout, the Draft EIR/EIS failed to mention or include at all in its analysis the 2001 Clarksburg General Plan, duly passed as an integral part of the Yolo County General Plan and is a matter of public record. As Yolo County is a cooperating agency and recognized arm of local government, the portions of its General Plan, specifically the 2001 Clarksburg General Plan, must be given the respect required by both state and federal law. The failure to include and analyze the 2001 Clarksburg General Plan is a fatal flaw.

ECON 15, analyzed in relation to Alternative 1A, and incorporated into various other Alternatives, regarding damage, impact and negative effects on community character, is deeply flawed. (See page 16-72, line 3 to page 16-73, line 10.) In addition to the failures discussed above, the NEPA portion of the analysis (page 16-72, line 5 to page 16-73, line 2) admits that serious and significant impacts would be imposed on Delta communities, while the CEQA portion of the analysis (page 16-73, lines 3-10) claims no physical impacts will occur. Either one statement or the other is true. Both statements cannot be true at the same time.

ECON 15, page 16-72, at lines 27-30 claims that CM3 (the cultivated land natural community strategy) would ensure continued agricultural production, but fails to address in any way the quality, type, values or other characteristics of that claim of continued agricultural production. It is basis and foundational to any NEPA or CEQA

analysis to include the basic parameters of anticipated changes in crop quality, type, value and other fundamental characteristics when claiming that “CM3 would ensure the continuation of agricultural production on thousands of acres in the Delta.”

The continued health of agriculture in the Clarksburg community in particular, and in the Delta in general, is essential to the financial health and human resources demands upon DECS and its ability to continue to satisfy the demands of its mission.

The activities, meetings, social gatherings, parades, and other regular and annual events which provide important glue for the community and its social harmony face substantial likelihood of disruption constituting a substantial and serious negative impact and effect.

### **Comments Regarding Cultural and Historic Resources**

The Clarksburg community is also a key area for Native American activity. Sections 18.1.1.3 and .4 in particular, and section 18.1 in general disclose that at no time did the drafters of the Draft EIR/EIS ever reach out to local historians who would have shown the drafters and their agents and associates the location of burial grounds, where arrowheads are generally found, and where other evidence of Native American culture is located.

The failure of analytics used throughout the preparation of the Draft EIR/EIS to even ask for local knowledge on the ground and generally known among families who have lived in the Delta for as much as seven generations is a fatal flaw in analysis and process throughout.

### **Comments Regarding Transportation**

Figures 19-3a, 19-3b, 19-4a and 19-4b, and Segments CT 28, 33 and 34, and YOL 01, 02 and 03, Table 19-1, admit to various serious and significant impacts and effects of each of the Alternatives on the transportation network and routes relied upon by DECS to perform its mission.

The analysis overall, and specifically as laid out in Table 19-3, seventh column from the left title “Hourly Volume Range (6AM to 7PM) specifically fails to take into account morning and evening agricultural activity before and after the stated hours during harvest, planting and growing seasons for various crops. Pear harvest, for example, during July and August, creates heavy traffic before 6AM and after 7 PM. The same is true of grape harvest in August, September and October.

The pavement conditions, Table 19-5, for YOL 01, 02 and 03 are admittedly generally unknown or are already inadequate. When 24-hour traffic diversions, and volunteer rerouting due to extremely heavy dump truck traffic to transport tunnel spoils and construction related vehicular, light equipment and heavy equipment trips, the Draft EIR/EIS admits the already inadequate roads will be damaged beyond repair. This will further fracture and degrade Community Cohesion.

Nowhere in the Determination of Effects, section 19.3.2, page 19-36, line 7 through page 19-39, line 1, was the admitted disruption of traffic operations inclusive of the parents bringing children to school and then getting them home. Traffic rerouting, whether directed by governmental authority, or voluntary in nature as people change their transportation routes as a result of, and to avoid construction and operation impacts, will seriously impact and effect DECS

For example and in particular, but not by limitation, the admitted time of “at least 1 hour” during which LOS would be exceeded (see, for example page 19-41, lines 10-11) does not analyze the resulting burden on emergency response. The same failure is true for corresponding analysis for all Alternatives.

Chapter 19 fails to analyze the serious impacts and effects of increased traffic, and in particular the serious impacts and effects of long periods of heavy equipment traffic, on the levee roads. Observable information related to the negative impact can be provided through actual observation of impacts in a home 60 feet away from the levee and 90 feet from Highway 160. The failure and omission of analysis of these issues is a fatal flaw.

### **Comments Regarding Public Services and Utilities**

Chapter 20 of the Draft EIR/EIS claims to describe the public services and utilities in the study area which may be affected by the construction, operations and maintenance of the action alternatives in the Plan Area. (Page 20-1, lines 4 – 6.)

As part of the subsection discussing Fire Protection and Emergency Response, the Draft EIR/EIS states “Response time is broken into three components: alarm processing time (dispatch), turnout time, and travel time. The element of time for alarm processing is in the hands of the dispatch and communication system. The amount of time it takes to turnout fire apparatus is different depending on whether the station is staffed by full-time permanent or otherwise assigned personnel, or whether the staffing is recalled (volunteer). Travel time is a function of speed and the availability of a road network to get to the scene of an emergency.” (Page 20-3, lines 35-40.) As the Clarksburg Fire Department is a volunteer fire department, the ability of the volunteers

to get to the fire station over the roadway network is critical for a timely response to a fire at DECS.

**Error.** At Table 20A-4, page 20A-13, of Appendix 20A, in the River Delta School District section, third school from the top of the page, referring to “Delta Elementary (K-6 Charter)” claims and states that the enrollment of the school, as of the date of the release of the plan (November 2013) is 123, with a capacity of 280, and states that capacity is not exceeded.

**Correction.** The correct numbers for the Delta Elementary Charter School (K-6) are: 345 enrollment, with a capacity of 345, at capacity, with a wait list of 32 as of November 2013. Please make this correction and change all analysis accordingly. Note: As of August 2014 the enrollment figure is 384.

### **Comments Regarding Public Health**

The Draft EIR/EIS fails to take into account various flood potential, flood dangers, and flood risks. In particular, the Draft EIR/EIS in final form should include the Lower Sacramento River/Delta North Regional Flood Management Plan (July 2014), its findings, analysis, conclusions and recommendations. Flood risk, flood events, and high water events have been a significant and serious part of life at all levels in the Delta. Flood dangers and risks, and actual flood events, should be an integral part of each and every chapter of the Draft EIR/EIS. The lack of such analysis throughout and in every chapter is a fatal flaw.

### **Comments Regarding Public Participation, Consultation and Coordination**

The public participation, consultation and coordination activities on the part of the preparers of the Draft EIR/EIS did not include any directed or specific outreach to DECS itself.

The largest outpouring of people coming to public meetings occurred in Clarksburg. (See, e.g., Table 32-1, page 32-2, line 18; Table 32-2, page 32-3, line 6.)

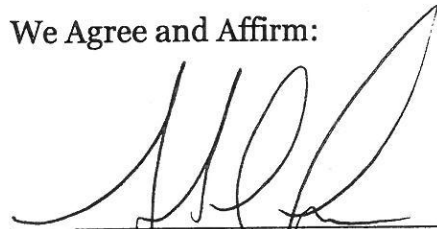
Although DECS is a major public entity in the Clarksburg area, the lack of outreach from the preparers of the Draft EIR/EIS to DECS, is a fatal flaw. DECS requests that the final EIR/EIS presentation clearly identify and show specifically all places where each and every one of the comments above is addressed.

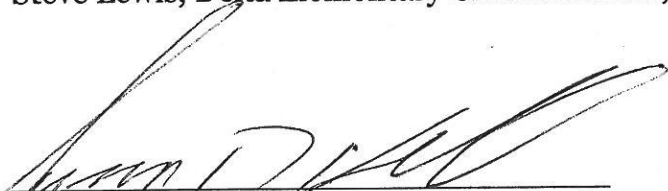
Please contact me if you have any questions.

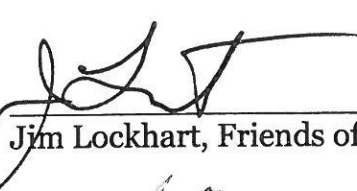
Very truly yours,  
DELTA ELEMENTARY CHARTER SCHOOL

By:   
Peter Stone, Chief Business Officer

We Agree and Affirm:

  
Steve Lewis, Delta Elementary Charter School, Superintendent/Principal

  
Darin Hall, Friends of Clarksburg Schools, Board President

  
Jim Lockhart, Friends of Clarksburg Schools, CFO

  
Matt Taylor, Friends of Clarksburg Schools, Board Member