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**ANC 3/4G Testimony Before the
Committee on Transportation and the Environment
Performance Oversight Hearing on
DC Water
February 26, 2019**

Chairperson Cheh and members of the Committee on Transportation and the Environment. I am Randy Speck, Chair of ANC 3/4G (Chevy Chase), and I am testifying on behalf of our Commission, which authorized this testimony at its February 25, 2019 meeting by a vote of 6 to 0 (a quorum being 4). I am also a member of DC Water's Stakeholder Alliance, a group organized by DC Water to advise it on various issues, including its Clean Rivers Impervious Area Charge (CRIAC).

ANC 3/4G first raised concerns about the impact of DC Water's CRIAC fees when the chair of DC Water's Board, Tommy Wells, attended our November 27, 2017 meeting (minutes available at <http://bit.ly/2Unc676> pages 3-8). Mr. Wells described the escalating CRIAC fees and told us that the Mayor is concerned about these costs and wants them to be shared fairly. He said that not only would high

CRIAC fees hurt residents, it might even drive some businesses to locate outside the District.

Director Wells emphasized that ultimately, DC Water needs help from the Council to address the escalating CRIAC burden. He acknowledged that one of the largest contributors to stormwater runoff is the District's public property — impervious streets, sidewalks, and alleys — for which the District makes no contribution toward paying its share of CRIAC costs. Director Wells acknowledged that it would “make sense” and “there is a rationale for the City” appropriate funds to buy down the obligation of DC Water ratepayers to pay CRIAC fees so that the costs can be spread more equitably among District taxpayers.

On March 2, 2018, we testified before this Committee (<http://bit.ly/2UhOdO2>) urging the Council to provide CRIAC relief. We said then that DC Water cannot solve the CRIAC dilemma alone. It needs to be proactively working with the Mayor and the Council to reduce CRIAC fees for all residential customers, but with particular attention to those who can least afford to pay — lower- and middle-income families, seniors with fixed incomes, and non-profits with limited funding resources. We urged the District to contribute to a fund in lieu of the amount that it would pay in CRIAC fees for exempted roads, sidewalks, and alleys and use that fund to pay down CRIAC fees for identified categories of

customers. These District contributions would be equitable because the District's impervious infrastructure is a major contributor to stormwater runoff that currently pays nothing. Moreover, CRIAC is inherently regressive — i.e., it disproportionately impacts those who can least afford it. If the District partially pays down CRIAC fees for those most in need, it spreads Clean Rivers' costs fairly among all taxpayers.

All of these concerns remain a year later. The Council did provide one-year, stopgap relieve to some non-profits in the FY 2019 Budget. Nevertheless, CRIAC continues to create a manifest hardship for many District residents and organizations, and that burden will escalate for at least another decade.

We support the need to make the environmental investments that CRIAC supports and to pay DC Water's obligations for cleaning up our rivers. There are two areas that warrant the Council's attention: (1) DC Water's use of impervious area estimates as the basis for CRIAC produces inequitable results with some paying more than their fair share while others pay too little considering their contribution to stormwater/sewage runoff; and (2) even if the charges were allocated equitably, the level of CRIAC fees now and in the future will continue to create a financial hardship for many customers.

The first category of concerns falls within DC Water's purview. It can and should revise its CRIAC methodology to allocate fees reasonably among customers and to provide incentives to reduce stormwater runoff.

DC Water cannot address the second concern, however, because its debt service obligation is fixed. The only way to reduce the burden of CRIAC fees on retail customers is to tap another source of funding. One possibility would be to seek greater contributions from the federal government or suburban jurisdictions. After all, both the federal government and suburban jurisdictions benefit from the services provided by DC Water, and they both contribute pollution entering the Anacostia River, which is now being addressed by a series of solutions that seeks to reduce the overflows into our waterways. While those alternatives should be pursued aggressively, they are not likely to provide the level of relief that will be needed as CRIAC fees increase to cover DC Water's growing debt load.

We urge the Council and the Mayor to consider legislative initiatives that recognize the District's contribution to stormwater runoff from its impervious transportation infrastructure — streets, sidewalks, and alleys — and to provide long-term relief to those customers in greatest need. Neither the District nor the federal government currently pay anything toward CRIAC for their streets, sidewalks, or alleys — about 40% of the impervious area in the District according to DC Water estimates (though it may be greater if there were a more accurate

measurement of impervious area). DC Water estimates that about 95% of these rights of way belong to the District and 5% belong to the federal government. If CRIAC fees were paid for these rights of way, it would reduce the CRIAC burden on other customers by 40%. The cost for the District would be about \$40 million annually and for the federal government about \$2 million annually.

If the District were to contribute to CRIAC costs, it would shift about 40% of CRIAC fees from other DC Water customers to District tax payers. While there is a significant overlap between those two groups, they are not identical. The District collects sales taxes and some other revenues from residents in other states, so the tax base is larger than the customer base. Moreover, DC Water is prohibited from making distinctions among customers — e.g., CRIAC fees must be applied uniformly to all customers or the federal government could successfully argue that the fee is really a prohibited tax on the federal government. The District, however, may use its tax policy to further other objectives — e.g., to provide more CRIAC relief to groups that have greater needs.

One way for the District and the federal government to pay their fair share of CRIAC for impervious transportation rights of way would be to modify the definition of “surface” in DC Code Section 34-2107(a)(1) to include public streets, sidewalks, and alleys. With this change, these sources of stormwater runoff would contribute about 40% of the total CRIAC fees each year. DC Water could then

reduce CRIAC fees collected from other customers commensurately. In order to avoid converting the CRIAC fee into an impermissible tax on the federal government, that reduction would have to be applied uniformly to all classes of customers, regardless of which group may need relief most. It has the advantage, however, of including federal rights of way as well, though this would be a relatively small contribution.

Another approach would be for the District to enact a new law that requires contributions to a fund equal to the amount that the District would pay if transportation rights of way were subject to CRIAC assessments. This fund would increase as CRIAC costs increase and would be used to provide varying reductions in property taxes or rebates to DC Water customer classes as an offset to the CRIAC fees that they paid.

For example, all single family residences could receive a credit on their property tax equal to a percentage of their CRIAC fees paid. Those taxpayers who qualify for senior citizen or disabled property owner deductions could receive a higher percentage. Since multifamily residences pay lower CRIAC fees per resident, their credit may be lower for market rate units but higher for affordable housing units. Qualifying small businesses may receive a credit on their property taxes, but other commercial businesses and governments may receive a lower or no credit. Nonprofits are exempt from DC real property taxes, but they could receive

an annual rebate through a program similar to the current CRIAC relief program in the “District of Columbia Water and Sewer Authority Rate Increase Mitigation Amendment Act of 2018” (DC Code Section 34-2201.16b), though the “financial hardship” and mitigation requirements may no longer be necessary.

Through these credits and rebates, the District could assume its fair share of the CRIAC fees, become a responsible partner, and reduce the impact of those fees on groups that are least able to bear these costs. This approach permits a more deliberate distribution of CRIAC relief but would not include any federal payment for its transportation rights of way. The District and DC Water could, however, attempt to persuade the Congress to make a similar contribution to the relief fund. This CRIAC relief program would be separate from DC Water’s revisions of its CRIAC calculations to ensure that they reasonably reflect each customer’s actual contributions to stormwater runoff and the ratio of wastewater to stormwater.