February 21, 2018

The Honorable Mary Cheh  
Councilmember Ward 3  
1350 Pennsylvania Ave. NW  
Washington, D.C. 20004

Dear Councilmember Cheh,

Thank you for your thoughtful letter, dated January 16, 2018, in which you suggested options to lessen some of the major affordability challenges presented by the Clean Rivers Impervious Area Charge (CRIAC). We are fortunate to have you as a partner in this effort because the solutions that the Council, Mayor and DC Water intend to craft in the coming weeks will impact current residents, institutions, businesses and future generations.

The underlying theme of the options you offered in your letter anticipate collaboration among the Council, Office of the Mayor, and people and institutions affected by CRIAC to provide a sustainable path forward. We evaluated those options with this goal in mind.

In this letter, I offer support for the best of the potential solutions advanced in your letter. I also describe the revenue requirement and contributions made by the three DC Water customer classes to that revenue requirement and explain DC Water’s efforts to lessen impacts of CRIAC on those who pay the charge. I begin with a brief update on the progress of the Project.

I. Project Progress

Since DC Water was established as an independent Authority in 1996, combined sewer overflow (CSO) volume has been reduced by about 40 percent on a system-wide basis.\(^1\) Construction of the Anacostia River Basin portion of the Clean Rivers Project (Project), downstream of RFK Stadium, will be completed and operational by March 23, 2018. This segment of the Project will provide more than 100 million gallons of storage to control CSOs to the Anacostia. The contents of the tunnel will be pumped out and treated at a new 225 million gallons per day Wet Weather Treatment Facility constructed at the Blue Plains Wastewater Treatment Plant. This phase of the Project will achieve approximately an eighty one percent (81%) reduction in CSO volume in the Anacostia.\(^2\)

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1 Long Term Control Plan Modification for Green Infrastructure. May 2015.  
2 The 2005 Consent Decree requires a $2.7 Billion construction program that includes building 18 miles of large Metro size underground tunnels. The Project will reduce Combined Sewer Overflows (CSOs) into the Potomac and Anacostia Rivers and Rock Creek during significant rain storms. After completion of the Project, CSOs discharges to the rivers and Rock Creek will be reduced by 96 percent overall in an average year of rainfall. There will be a 98 percent reduction
In 2023, the Northeast Boundary Tunnel is scheduled to be placed in service. This tunnel runs from RFK Stadium to approximately 6th and R Street NW and connects to the First Street Tunnel that was completed in 2016 and will provide additional CSO control and flood relief. (Attachment 1)

II. Efforts to Mitigate Project Costs

According to EPA records, of the 32 consent decrees that address combined sewer systems in the country, the consent decree that mandates the Clean Rivers Project is the fourth most costly. Improvements mandated by the consent decree cannot be avoided. CRIAC is projected to increase each year until 2030 and will continue until all the bonds that financed the Project have been retired. These facts require special focus on the impacts of the charge.

Since the beginning of the Project, DC Water has focused on the impact of CRIAC fees, and has taken tangible steps to address the cost burdens on our customers. In 2014, DC Water issued the first century bond by a water and wastewater utility in the United States. This one hundred-year maturity enables DC Water to spread the costs of investment more affordably and equitably to beneficiaries over the lifespan of the Project. In 2016, DC Water persuaded the court to extend the compliance schedules in the consent decree. Also in 2016, the First Street Tunnel was placed in operation. This tunnel provides more than 9 million gallons of storage to mitigate combined sewer flooding in Bloomingdale and LeDroit Park. These actions have benefitted ratepayers without impairing environmental objectives.

Every three years DC Water retains outside experts to review and suggest adjustments to its water and sewer rates based on actual costs incurred to ensure that customers are charged appropriately. In Fiscal Year 2019, DC Water is proposing a decrease in the CRIAC. Assuming the DC Water Board of Directors approves the rates and fees recommended by staff, for the Fiscal Year 2019 beginning October 1, 2018, the Impervious Area Charge will be decreased, from the projected $25.18 per Equivalent Residential Unit (ERU) to $23.00 per ERU. The new CRIAC rate reflects savings for current customers achieved from the refinancing of debt and the century bond. There will be a corresponding increase in the sewer rate of 13 percent over the FY 2018 rate. Customers with significant impervious area will see a reduction in their overall water bill and the average customer bill will still be less than estimated.

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5 CRIAC was disaggregated from the sewer rate in 2009 to highlight and make the charge more transparent, but costs are still for sewer services.
6 The proposal will be considered at the March 1, 2018 meeting of the Board of Directors.
7 The increase in the sewer rate is necessary to meet operating costs and to ensure that costs are appropriately allocated between the volumetric Water and Sewer Rates and the Clean Rivers Impervious Area Charge.
II. Revenue Requirement and Sources of Revenue

Over the next five years, DC Water will require approximately $636.2 million to complete the current Anacostia River basin phases of the Project – see Figure 1. Most of the revenue raised will be applied to debt service.

**Figure 1: Clean Rivers Revenue Requirements: FY2018-22**

<table>
<thead>
<tr>
<th>FY2018</th>
<th>FY2019</th>
<th>FY2020</th>
<th>FY2021</th>
<th>FY2022</th>
<th>5 Year Total</th>
</tr>
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<tbody>
<tr>
<td>$119,733,241</td>
<td>$108,945,058</td>
<td>$121,190,575</td>
<td>$137,826,116</td>
<td>$148,552,163</td>
<td>$636,247,153</td>
</tr>
</tbody>
</table>

Revenue to pay for the Clean Rivers program comes from DC Water ratepayers, DC Water wholesale customers, and the federal government. DC Water ratepayers have paid the largest percentage of these costs. All ratepayer contributions for this program come from the Clean Rivers Impervious Area Charge.

Most Clean Rivers Project expenditures are financed with debt instruments that have payback periods ranging from 35 to 100 years. This reduces costs for today’s customers and ensures that future ratepayers who will benefit from the Clean Rivers program will contribute to Project costs at a level commensurate with the benefits they receive from the Project.

Clean Rivers charges are paid by the members of all three DC Water customer classes (italicized). In Fiscal Year 2017, $112.9 million was paid in Clean Rivers Impervious Area charges: $31.1 million was paid by Residential Customers; $38.2 million was paid by Non-Residential Customers (counted in this class are businesses (commercial), churches, and non-profits): Multi-Family Customers paid $13.4 million; the federal government paid $20.6 million; the District of Columbia government $8.2 million; and, the DC Housing Authority paid $1.4 million.

For every $5 million in costs that are added, each average ratepayer with 1 Equivalent Residential Unit (ERU) pays an additional $1 per month. Conversely, if $5 million were paid by a source other than DC Water ratepayers, average household users would pay about $1 less per month.

IV. Current Hardship and Credit Programs

As you noted in your letter, thresholds set by the D.C. Department of Energy and the Environment are used to determine eligibility in DC Water’s Customer Assistance Program (CAP). Participants in the CAP program are eligible for a 50 percent (50%) credit on their monthly CRIAC, in addition to the 4 CcF of free water and sewer charges and 100% discount on the WSRF fee, plus discounts

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8 An ERU is a measure of the amount of impervious surface area in a single-family residential property in square feet. All nonresidential customers are assessed ERUs based on the total amount of impervious surface on each lot.
on the PILOT and Right-of Way Fees. DC Water’s CAP program assists approximately 4,200 families with at least a $59.13 monthly discount based on 4 CcF usage and one (1) ERU.9

DC Water can only provide assistance to District residents whose service is individually metered. Likely, there are CAP eligible customers who cannot receive relief because they are living in housing that does not assign them a separate bill. In many cases, apartments and other units have one master meter and water charges are included as part of rent or other fees. Our hope is that the District government, as part of a larger effort to provide a hardship exemption, can accommodate petitions from some of the possibly 19,00010 eligible families that are not captured in our CAP assistance program.

DC Water also offers a credit program for certain Green Infrastructure property improvements to its residents through its Clean Rivers Impervious Area Charge Incentives Program. Under this credit program, residents are eligible for up to four percent (4%) discount on their Impervious Area Charge.

V. New Hardship Program Considerations and Solutions

Cemeteries. DC Water is assessing the possibility of providing CRIAC relief to cemeteries. In FY 2018 the total amount assessed on 1411 cemeteries that we believe are not-for-profit organizations is about $550,000 a year. Although this figure is a relatively small portion of the FY 2018 Clean Rivers Program revenue requirement, some cemeteries have reported that the CRIAC may impact their financial survivability. After consideration of available options, we believe that relief can be offered based on the special characteristics of not-for-profit cemeteries.

Cemetery representatives with whom we have spoken have indicated they are not seeking a complete exemption from impervious area charges because they appreciate the benefits of investing in infrastructure that supports cleaner rivers, lakes, creeks and streams. Our hope is that the cemetery community will welcome an effort to establish a percentage discount using the same approach that benefits CAP eligible customers which could lessen the threat to their continued economic viability.

Churches and Non-profits. The situation is more complicated for churches and other non-profit institutions that pay CRIAC. Each are members of the large DC Water Non-Residential Customer rate class. We evaluated the possibility of a new hardship exemption that would be available to low income residential customers or more widely to all non-profits, including churches and other religious organizations, social service providers, charter schools, and similar institutions.

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9 By comparison, the Washington Suburban Sanitary Commission’s discount program provides up to $112 annually or about 15 percent of DC Water’s program.
10 The 19,000 is the approximate delta between our records on CAP customers and LIHEAP eligible residents.
11 The total number of cemeteries may be as high as 18. 501(c)(13) is an express designation for not-for-profit cemeteries.
According to the D.C. Office of Tax and Revenue and the U.S. Internal Revenue Service, there are at least 3,650 non-profits registered in the District of Columbia. When we performed a property match at a DC Water account level, we uncovered only 361 accounts with an exact name match in our customer information system. The 2018 revenue associated with the CRIAC portion of the water bill on these 361 accounts is $2,050,986. When we include the eight major universities and many of the charter schools that fall under a nonprofit status to the 361 accounts this adds an additional $3.7 million in CRIAC revenue.

However, it is probable that the number of non-profits owning property in the District is significantly higher than the number reported above. Our estimate is that providing an across the board exemption to all non-profits in the city would likely reduce revenue to Clean Rivers by as much as $19 million a year. This was calculated by identifying all potential non-profits in the District, and calculating how much those properties pay in IAC. The number needs refinement because not all non-profits are DC Water customers because many rent or share spaces.

**Hardship Considerations.** DC Water enthusiastically supports any commitment made by the Mayor or Council to establish a fund to provide broad-based relief to churches, non-profits, and residents based on need. Such relief could be provided as a direct payment to DC Water on behalf of successful applicants. We prefer that the qualifications for relief and the level of funding be determined by the Mayor or Council, because doing so will preserve the rate making principle that CRIAC is the same for all similarly situated customers. Preserving this distinction highlights the cost based fee aspect of the charge. Equally important, we do not want to put at risk federal payments made on the fee for services basis that could be challenged if a determination is made that our rate setting process is arbitrary and capricious.

If the Mayor and the District commit to establishing a fund, we suggest that charitable status and a ratio of yearly CRIAC to total income be elements of the eligibility determination. We also strongly suggest that the commitment be in the form of a dedicated fund that can survive and grow from budget cycle to budget cycle.

**VI. Incentive Program Considerations**

DC Water is assessing the possibility of expanding the current four percent (4%) discount to a higher percentage as part of our Clean Rivers Impervious Area Charge Incentive Program. Our plan is to evaluate options to provide District residents, businesses and institutions opportunities to take advantage of incentive plans with a larger incentive to pursue green infrastructure on their property. We recognize that substantial increases in credits will cause the CRIAC to increase for “non-credited” customers unless additional revenue sources become available.

**VII. Additional Revenue Considerations**

**District and Federal Right of Way.** Any contribution from the City will lessen the burden shared by other ratepayers. The argument has been made that the City paying impervious area charges
for roads and sidewalks will only shift additional burden to taxpayers, however, the City can adjust the amount of taxes collected based on the level of additional contributions to the Project that the City deems appropriate. Not all taxpayers pay the same taxes, nor do all taxpayers pay taxes at the same rates.

When CRIAC was disaggregated from the sewer rate in 2009, there was an unresolved question whether DC Water had the statutory authority to charge for sewer in the public rights of way. This circumstance was remedied by granting express authority to implement the current CRIAC billing methodology which is based on impervious surfaces. 12

We estimate the District and Federal Right of Way is between 38 to 40 percent of the District’s impervious area coverage. If the total ERUs ascribed to the District and Federal Rights of Way is included in the impervious area for rate purposes, the District would be responsible for additional payments totaling about $41 million and the Federal government would be responsible for approximately an additional $5 million. 13 With that amount of additional funding, DC Water rate payers would see an immediate reduction in the CRIAC across the next six years – resulting in an estimated monthly charge of $13.77 per ERU compared to $23.00 in 2019 and $20.80 per ERU in 2025 compared to $34.75 under current projections.

**Intermunicipal Agreement: MD/VA.** The majority of DC Water’s wastewater customers are those living in neighboring jurisdictions of Prince George’s and Montgomery Counties in Maryland and Fairfax County in Virginia. Collectively, these jurisdictions pay 7.1 percent of eligible Project costs based on a CAO/City Administrator level negotiated agreement that has been documented in the 2012 Intermunicipal Agreement. The basis of the negotiated agreement is engineering modelling and calculations of the capacity taken by flows from neighboring jurisdictions in combined sewers that otherwise would be available to transport flows originating in the District.

The proportion of flows has been stable since the date of the last adjustment in 2012. As of December 2017, DC Water has spent approximately $1.4 billion on Clean Rivers Project improvements. Of that amount, neighboring jurisdictions have contributed $156.5 million. Unless the unavailable capacity ratio changes significantly, it will be difficult for DC Water to engage the IMA partners in meaningful discussions about this option. However, this does not impair the ability of the Mayor to signal to the County Executives in Prince George’s, Montgomery and Fairfax Counties the need to discuss potential options for increasing the amount each jurisdiction pays to support the Project.

**Federal Funding.** Each year, DC Water pursues federal appropriations for the Clean Rivers Project. However, Federal appropriations have declined dramatically in recent years. In 2003, the appropriation was $49.5 million; in 2010 the appropriation was $20 million; in 2013, it was $14.2 million. Federal appropriations in FY 2018 is undecided and 2019 is zeroed out altogether. For these reasons, Federal appropriations are not a significant element of the financial model that

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12 D.C. Code Ann. §34-2107(a) (2001)
13 This additional revenue estimate is based on an estimate that approximately 90 percent of the rights-of-way are District owned and approximately ten percent are Federal.
supports the Project. Nevertheless, DC Water enthusiastically welcomes support from every segment of the community in its pursuit of current and future appropriations.

**Alternative Sources.** One way to reduce the cost burden for ratepayers and District residents is to explore opportunities of alternative financing from additional sources of revenue. DC Water is mindful of the number of visitors of the District of Columbia that depend on the infrastructure and services it supports and believes this is an untapped opportunity to generate alternative funding. We welcome the opportunity to explore potential strategies to generate revenue from groups beyond the DC Water ratepayer base.

VIII. Multi-Family Water Conservation Opportunities

Finally, in your letter you raise the concern that Multi-Family property owners do not have the same opportunity to reduce their water and sewer bills by managing consumption as do single-family residents. This concern is not related to the impacts of the CRIAC because CRIAC is a fixed fee, not based on consumption. Nevertheless, our consideration of the merits of the assertion deserve comment.

My understanding is that the concern results from the fact that many residential units are in buildings where the plumbing configuration does not permit individual metering of units, or that conversion to individual meters in their building(s) is cost prohibitive. The Multi-Family Customer class is reserved for owners of structures that contain more than four dwelling units. In this scenario, the customer relationship with DC Water is not with the individual unit owner or tenant or dweller. Rather, the customer relationship is with the owner of the property. Equally important, unless individual meters are installed, benefits of any individual property owner’s conservation efforts in a multi-unit structure will depend on the net result of their and their neighbors’ efforts.

DC Water staff will study whether easily implementable mechanisms and adjustments are available to provide conservation incentives for the Multi-Family Customer classification in the coming months. Members of subgroups of the customer class must be determined. Parsing through data for the Multi-Family customer class which only grossly defines membership as buildings with more than four units will take time.

IV. Going Forward

It is easy to lose sight while debating the cost of this program of the immense benefits that Clean Rivers Project provides to every visitor and resident of the District of Columbia. Cleaner rivers, lakes, and streams mean a brighter future.

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14 In FY18, single family residential units that consumed 0-4 Ccf of water are charged at a rate of $3.39/Ccf. Single family residential units that consumed greater than 4 Ccf of water are charged at a rate of $4.26/Ccf. Multi-family units are charged at a rate of $3.80/Ccf, which is between the two residential rates.
Please consider this reply to your letter as a framework for continued conversation. We are performing the due diligence needed to further quantify impacts of each option discussed above. We are also committed to continuing this dialogue with all affected segments of our community. We appreciate your leadership on these issues and look forward to talking with you and working with your capable and responsive staff again very soon.

Warmest regards,

Henderson Brown