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September 14, 2023

Christina Kravitz, Damage Assessment Case Officer
Natural Resource Stewardship and Science, Environmental Quality
Division, Resource Protection Branch
National Park Service, Department of the Interior
1849 C Street NW
Washington, DC 20240

Cc: Anacostia River Natural Resource Damage Assessment and
Restoration Trustees

Re: DC Appleseed Comments on Anacostia River NRDAR Trustees Draft Damage Assessment Plan

Dear Ms. Kravitz,

The DC Appleseed Center for Law and Justice (“DC Appleseed”) is a nonprofit, non-partisan organization that aims to make the District a better place to live and work through litigation, teamwork, and advocacy. For more than 20 years, DC Appleseed has supported the complete and equitable restoration of the Anacostia River.

Thank you for the opportunity to comment on the Anacostia River Natural Resource Damage Assessment and Restoration (NRDAR) draft Damage Assessment Plan (DAP). We appreciate the additional information regarding the Trustees’ proposed approaches to assessing the injuries to the Anacostia River and estimating damages. After reviewing the draft DAP, we offer a few comments and technical suggestions, including a spreadsheet with more detailed comments indexed to the Plan page number.

I. The Current Draft Provides a Strong Roadmap but Lacks Key Details.

Overall, we feel the draft DAP serves as a quality framework document for the Anacostia River’s injury and damages assessment process. We acknowledge that planning for this assessment is still preliminary, and the full scope of the injuries to the Anacostia River is not yet known. Bearing this in mind, we feel the document lacks key details required



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for meaningful public input and for potentially responsible parties (PRPs) to consider early restoration actions.

The DAP is intended to clearly outline how the Trustees will assess injuries to natural resources and resource services in the Anacostia River stemming from releases of hazardous substances, which includes providing accurate data and site-specific knowledge on the proposed methodologies, thresholds, and injury quantification standards that will be used.

The public will benefit from greater specificity. As the Trustees correctly acknowledge, the lost use of the Anacostia River disparately impacts Black, Indigenous, and people of color (BIPOC), as well as low-income residents of DC. Due to that disparate impact, many community members are anxious to ensure environmental justice (EJ) is fully considered during the restoration. Currently, Section 4.2.5 of the DAP states that “Trustees will identify and, to the extent possible, incorporate various metrics that evaluate EJ implications...” The public would be more equipped to provide feedback if some examples of the potential metrics to evaluate environmental justice were included in the DAP. Because key details are not included within the draft DAP, we recommend that the Trustees seek additional feedback from the public and key stakeholders as the DAP is updated with additional data.

II. Early Action Projects.

The acknowledgment in the draft DAP that early restoration actions may occur is appropriate; however, the lack of sufficient detail and technical nuance in the Plan limits the potentially responsible parties’ ability to gauge the magnitude of potential injury, making it difficult for them to assess the size and likely cost of early action projects. In the draft DAP, important and known details about the intended plans for the injury and damages assessment are not included. For example, Section 4.2.3 discusses the use of Habitat Equivalency Analysis (HEA), which requires the input of specific levels of ecological service loss. For a sediment site, service losses are equated with specific concentrations in the sediment.

We believe the DAP should provide the thresholds and associated service loss values that the Trustees intend to use for injury quantification. Although research on the ecological effects of sediment contamination is ongoing, the exercise of associating chemical concentrations with specific levels of injury has been completed at



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many sediment sites and therefore need not be completed from scratch for the Anacostia River. We recommend providing injury thresholds in the DAP, even at the preliminary level, to provide some guidance to the injury quantification. With improved data precision, PRPs will be in a better position to evaluate their natural resource damage liability and can then appropriately scale potential early environmental restoration actions to better facilitate community services.

During a meeting with the Trustees on October 25, 2022, DC Appleseed offered to convene and seek input from impacted community members regarding their needs and preferences for early action projects. We renew that offer and remain supportive of efforts to make early action projects attractive and feasible for PRPs.

III. Coordination with other Restoration Efforts.

We suggest increased coordination between the various Anacostia River restoration projects. While some degree of coordination may be anticipated, the extent of coordination is unclear from the draft DAP. For example, Section 4.2.2 focuses on Resource Recovery and refers to time-series data and monitoring data. There is no reference here or elsewhere in the draft DAP to the monitoring data described in the DC Department of Energy and the Environment's (DOEE) Baseline/Performance Monitoring Plan. That work plan describes the collection of data that will be integral to both injury determination and the trajectory for recovery of the site. Therefore, the DAP would ideally acknowledge and plan for close integration with the scope of work described in that work plan.

IV. Detailed Comments.

The attached spreadsheet includes two pages of specific suggestions and corrections to the draft. We are happy to respond to DOEE's questions about these comments.

Respectfully submitted,

Vanessa Batters-Thompson
Executive Director, DC Appleseed Center for Law and Justice



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DC Appleseed Center for Law and Justice: Comments on NRDAR Draft Damage Assessment Plan

Section	Page	Comment
1.4.2	1-3	The acknowledgment that early restoration actions may occur is appropriate. However, this document lacks sufficient detail for a potentially responsible party (PRP) to reasonably evaluate the likely extent of the injuries that the Anacostia River Natural Resource Damage Assessment and Restoration (NRDAR) Trustees may quantify. For example, Section 4.2.3 discusses the use of Habitat Equivalency Analysis (HEA), which requires the input of specific levels of ecological service loss. For a sediment site, service losses are equated with specific concentrations in the sediment. The draft Damage Assessment Plan (DAP) should provide the thresholds and associated service loss values the Trustees intend to use for injury quantification. Although research on the ecological effects of sediment contamination is ongoing, the exercise of associating chemical concentrations with specific levels of injury has been completed repeatedly at many sediment sites and therefore need not be completed from scratch for the Anacostia River. By providing injury thresholds in the DAP, even in draft form, PRPs will be in a better position to evaluate their Natural Resource Damages (NRD) liability and can then appropriately scale the size and cost of potential early restoration actions.
2.3	2-5	Additional information should be provided on the manner in which dioxins and dioxin-like Polychlorinated biphenyls (PCBs) were screened. Reference is made to a 1993 United States Environmental Protection Agency (EPA) document [now archived] as a source of screening values. That document has multiple concentrations for fish, sediment, and water, and multiple target organisms. Which were used? Why was this source for screening values used? What were the results of the screening? EPA Region III freshwater sediment benchmarks are approximately 1,000 times lower than the 1993 EPA benchmarks. Use of the Region III benchmarks for screening would have presumably resulted in the identification of dioxins and a hazardous substance of concern for injury assessment.
2.3	2-7	Non-detect results were used for screening. How will non-detect results be used for injury quantification?
4.1.1	4-2	Use of Food, Drug, and Cosmetic Act action or tolerance levels for injury determination is not appropriate. These levels are legal devices, not risk-based standards.
4.2.1	4-3	Additional information should be provided here on the manner in which baseline conditions will be established. It is unclear as written how releases of treated or untreated wastewater will be considered in baseline determination.
4.2.2	4-3	This section refers to time-series data and monitoring data, but there is no reference here or anywhere else in this document about the monitoring data described in the Baseline/Performance Monitoring Plan. That work plan describes the collection of data that will be integral to both injury determination and the trajectory for recovery of the site. Therefore, the DAP should be closely integrated with the scope of work described in that work plan.
4.2.3	4-4	Habitat-based resource equivalency method (HaBREM) is described in the text box on this page, but nowhere else in the document. Will this method be used? If so, how will it be used?
4.2.5	4-7	The document states that the Trustees "...will identify and, to the extent possible, incorporate various metrics that evaluate EJ implications of [hazardous] substances." What are examples of the "various metrics" that may be used?
4.3	4-7	There are no Anacostia River data currently available through NOAA's DIVER database, which is stated as the primary information source the Trustees will use for injury determination and quantification. When will these data be made publicly available?
4.4	4-8	Item #1 on Exhibit 4-1 appears to be equivalent to the derivation of Acute Effects Thresholds (AETs). Do the Trustees anticipate deriving site-specific AETs for this project?

DC Appleaseed Center for Law and Justice: Comments on NRDAR Draft Damage Assessment Plan

4.4	4-8	For Item #3 on Exhibit 4-1, will interpolations be made at different time scales? Will different service losses be assigned for different time periods? Contaminant trend analysis should be conducted to assess whether temporally variable injury quantification is warranted.
4.4	4-9	For Item #5 on Exhibit 4-1, will baseline conditions for chemical concentrations in fish be estimated for 1981, which is stated on p. 2-1 as the beginning year for service losses? If so, how will these concentrations be determined?
5.1	5-1	The text refers to compensation ratios to account for potential differences in ecological services provided by different habitat types. HEA is capable of accounting for variable habitat values, which makes it unnecessary to develop variable compensation ratios. Will habitat value be incorporated into HEA?
5.2	5-2	Per- and polyfluoroalkyl substances (PFAS) are not mentioned anywhere in this document. Recognizing that the groundwater aquifers underlying the assessment area have not been fully characterized, as stated on p. 3-9, do the Trustees plan to use available PFAS data in groundwater or collect new PFAS data for injury determination?
5.3	5-2	The document acknowledges there may have been recreational use losses, including boating. Some of the boating use losses are attributable to declining water depths, rather than the release of hazardous substances. Declining water depth should be incorporated into the determination of baseline conditions.