

LOW IMPACT HYDROPOWER INSTITUTE

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www.lowimpacthydro.org**

LOW IMPACT HYDROPOWER CERTIFICATION PROGRAM

CERTIFICATION PACKAGE

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LOW IMPACT HYDROPOWER CERTIFICATION PROGRAM

PART I INTRODUCTION

The Low Impact Hydropower Institute (“Institute”) has established a Low Impact Hydropower Certification Program (“Certification Program”) to certify hydropower facilities with impacts that are low compared to other hydropower facilities based on objective environmental criteria. The Certification Program’s goals are to reduce the environmental impacts of hydropower generation, and to create a credible and accepted standard for consumers to use in evaluating hydropower. For a hydropower facility to be certified as low impact, objective certification criteria must be met in the following eight areas: (1) river flows, (2) water quality, (3) fish passage and protection, (4) watershed protection, (5) threatened and endangered species protection, (6) cultural resource protection, (7) recreation, and (8) facilities recommended for removal. A hydropower facility meeting the eight certification criteria will be certified as a Low Impact Hydropower facility, and will be able to use this certification when marketing power to consumers.

I. WHY CREATE A LOW IMPACT HYDROPOWER CERTIFICATION PROGRAM?

In the new world of consumer choice being created through electric power industry restructuring, environmentally preferable electric power is one of the markets developing first. From early evidence in California and Pennsylvania, energy from wind, solar, geothermal, biomass and hydropower are attractive to many consumers. But consumers often have questions about the specifics of various generation sources, including hydropower. What generation is environmentally preferable and what is not?

For many knowledgeable consumers, hydropower raises issues. They understand that hydropower dams have both positive and negative environmental impacts. Hydropower dams provide public benefits such as flood control, recreation, water supply, irrigation and the offset of fossil fuel and other power sources that generate air pollution. But hydropower dams also have environmental impacts, such as flooding river habitat, blocking fish passage, altering natural flow cycles, and degrading water quality. If a dam is well sited and well operated, these environmental impacts can be reduced, though not eliminated. Consumers are seeking a credible means to determine which hydropower facilities are well sited and well operated and thus provide the benefits of the hydropower while minimizing the dam’s environmental impacts.

In states where the issue of distinguishing hydropower's benefits and impacts has been addressed legislatively, an interim solution used (based on PURPA's Qualifying Facility definition) is size. Small hydropower (less than an arbitrary cutoff, usually 30 megawatts) is defined as renewable. But this size criterion is a poor indicator of the environmental impacts of a hydropower facility. For example, small facilities that de-water river reaches and block fish passage may be more environmentally destructive than larger facilities designed and operated to reduce environmental impacts. Under this size criterion, a dam is either renewable or not – a small dam can be operated in a way that is harmful to the environment and still be environmentally preferable, and a large dam can undergo major changes to reduce the environmental impacts of its operation and still not be considered environmentally acceptable.

In addition, a small hydro criterion automatically certifies the majority of hydropower *dams* in the country, but eliminates from consideration the majority of the country's hydropower *capacity*. Of the over 2,000 hydropower dams in the US owned by entities other than the federal government, approximately 89% of the *dams* are "small" (less than 30 megawatts capacity), but together they only provide only 8% of the hydropower *capacity*. The remaining 11% of the dams produce 92% of the hydropower capacity. Thus, under the small hydro approach, we are classifying as environmentally preferable a large number of dams but not a large amount of power, and we are granting that preferred status without any examination of the operation of those dams.

To respond to the need for an impact-based evaluation of hydropower dams, the Low Impact Hydropower Institute has been established to create a voluntary program to certify hydropower facilities with environmental impacts that are low compared to other hydropower facilities based on objective environmental criteria. This distinction allows well sited and well operated hydropower dams to gain a market advantage for the benefits that hydropower dams provide.

The Institute's Certification Program evaluates the siting and operation of hydropower dams based on objective environmental criteria. The Institute has identified eight key areas that provide a reasonable approximation of the environmental impacts of a facility. The Certification Program establishes basic objective criteria for each of these eight areas. Because every dam and every river is different, it is not possible for objective standards to delineate with 100% accuracy all low impact hydropower facilities. However, the Low Impact Hydropower criteria are a good means of identifying those facilities whose siting and operation minimize the dam's environmental impacts.

II. PROGRAM GOALS AND OBJECTIVES

A. Program Goals:

The Low Impact Hydropower Institute's Certification Program has two equally important fundamental goals: (1) Reducing the environmental impacts of hydropower generation; by (2) Creating a credible and accepted standard for consumers to use in evaluating hydropower.

1. Reduce the environmental impacts of hydropower generation: A goal of the Low

Impact Hydropower Certification Program is to improve existing conditions of natural resources affected by dams. The Low Impact Hydropower Certification Program will recognize facilities that are sited and operated in a manner that reduces environmental impacts, and will provide an incentive to other dam owners to change their operations to reduce environmental impacts. Certified facilities will at a minimum comply with applicable laws for protection of fish, wildlife, water quality, endangered species and cultural and recreational resources. In addition, because these are environmental criteria, the level of environmental protection will generally exceed current legal requirements, which often take more than environmental concerns into account.

2. Create a credible and accepted standard for consumers to use in evaluating hydropower: A goal of the Low Impact Hydropower Certification Program is to create a credible and accepted standard for consumers to use in evaluating hydropower. The Certification Program will provide an independent and credible evaluation of hydropower to create a product that is effectively differentiated in the consumer marketplace for power. The Certification Program must be credible with consumers, the environmental community and the hydropower industry. To accomplish this, the Certification Program will be: (1) Based on objective certification criteria with a scientific basis; (2) Administered in a fair and efficient manner; and (3) Judged on applications that are open to public review and comment.

B. Program Objectives:

To meet the two Program goals described above, the Institute's objective is to require hydropower certified facilities to meet eight criteria related to: (1) River flows, (2) Water quality, (3) Fish passage and protection, (4) Watershed protection, (5) Threatened and endangered species protection, (6) Cultural resource protection, (7) Recreation, and (8) Facilities recommended for removal. The certification criteria have been designed with the recognition that if the level of environmental protection is set too high, an insufficient amount of power would be eligible for certification and thus the value of the program in the emerging power market would be undermined. If an effective market for low impact hydropower develops, the level of environmental protection in the criteria is intended to increase over time, consistent with the Institute's recognition of the need for a robust environmentally preferable power market.

III. CERTIFICATION CRITERIA:

The eight Low Impact Hydropower certification criteria are described below. The approach taken for setting the criteria is designed to establish objective criteria while recognizing that conditions at every dam and on every river are different. The criteria rely on formal recommendations of expert government agencies whose mandates are to protect the resources the criteria are designed to evaluate. Thus, for most criteria the hydropower facility must meet the latest and most stringent recommendation of the relevant state or federal resource agencies. To accommodate situations where appropriate resource agency recommendations do not exist, the criteria establish other objective criteria to meet the same goals. If a facility meets the requirements under all eight of the criteria, the facility will be certified as Low Impact Hydropower. A facility failing on one or more of the criteria will not be certified. The criteria do not apply to new hydropower dams (but additions to existing dams are eligible under certain

circumstances), hydropower facilities outside of the United States, and pumped storage facilities. For the specific criteria requirements, see the Low Impact Hydropower criteria in Part VI below.

1. Flows: The Flows Criterion is designed to ensure that the river has healthy flows for fish, wildlife and water quality, including seasonal flow fluctuations where appropriate. For instream flows, a certified facility must comply with recent resource agency recommendations for flows, or meet one of two alternative standards to demonstrate that flows are appropriately protective of water quality, fish and wildlife.

2. Water Quality: The Water Quality Criterion is designed to ensure that water quality in the river is protected. The Water Quality Criterion has two parts. First, an Applicant must demonstrate that the facility is in compliance with state water quality standards, either through producing a recent Clean Water Act Section 401 certification or providing other demonstration of compliance. Second, an applicant must demonstrate that the facility has not contributed to a state finding that the river has impaired water quality under Clean Water Act Section 303(d).

3. Fish Passage and Protection: The Fish Passage and Protection Criterion is designed to ensure that, where necessary, the facility provides effective fish passage for riverine, anadromous and catadromous fish, and protects fish from entrainment. For riverine, anadromous and catadromous fish, a certified facility must be in compliance with both recent mandatory prescriptions regarding fish passage and recent resource agency recommendations regarding fish protection. If anadromous or catadromous fish historically passed through the facility area but are no longer present, the facility will pass this criterion if the Applicant can show both that the fish are not extirpated or extinct in the area due in part to the facility and that the facility has made a legally binding commitment to provide any future fish passage recommended by a resource agency. When no recent fish passage prescription exists for anadromous and catadromous fish, the Applicant must demonstrate either that there was a recent decision that fish passage is not necessary for a valid environmental reason, or that existing fish passage survival rates at the facility are greater than 95% over 80% of the run.

4. Watershed Protection: The Watershed Protection criterion is designed to ensure that sufficient action has been taken to protect, mitigate and enhance environmental conditions in the watershed. A certified facility must be in compliance with resource agency and Federal Energy Regulatory Commission (“FERC”) recommendations regarding watershed protection, mitigation or enhancement. The watershed criterion was revised in 2004 and placed on LIHI’s web site for Public Comment and review. No comments were received.

5. Threatened and Endangered Species Protection: The Threatened and Endangered Species Protection Criterion is designed to ensure that the facility does not negatively impact state or federal threatened or endangered species. For threatened and endangered species present in the facility area, the Applicant must either demonstrate that the facility does not negatively affect the species, or demonstrate compliance with the species recovery plan and receive long term authority for a “take” (damage) of the species under federal or state laws.

6. Cultural Resource Protection: The Cultural Resource Protection Criterion is designed to ensure that the facility does not inappropriately impact cultural resources. Cultural resources

must be protected either through compliance with FERC license provisions, or through development of a plan approved by the relevant state or federal agency.

7. Recreation: The Recreation Criterion is designed to ensure that the facility provides access to the water and accommodates recreational activities on the public's river. A certified facility must be in compliance with terms of its FERC license or exemption related to recreational access, accommodation and facilities. If not FERC-regulated, a certified facility must be in compliance with similar requirements as recommended by resource agencies. A certified facility must also provide access to water without fee or charge.

8. Facilities Recommended for Removal: The Facilities Recommended for Removal Criterion is designed to ensure that a facility is not certified if a natural resource agency concludes it should be removed. If a resource agency has recommended removal of a dam associated with the facility, certification is not allowed.

IV. CERTIFICATION PROCESS

Certification under the Low Impact Hydropower Program is designed to be a fair and efficient process for determining whether a hydropower facility has low environmental impacts. An Applicant fills out a certification questionnaire, attaches supporting information and forwards the completed application to the Low Impact Hydropower Institute. Early emphasis of the Certification Program will be on facilities in New England and the Pacific Northwest, although applications will be accepted for certification of facilities in other regions. The Certification Administrator posts the complete application on the Institute's Web page for a 60-day public comment period, and forwards the full application package (with any public comments) to the Application Reviewer. The Application Reviewer reviews the package, conducts any factual investigation needed to resolve factual disputes and evaluate the veracity of claims, and returns the application to the Certification Administrator with a certification recommendation. The Institute's Governing Board makes a preliminary certification decision, which is posted on the Institute's Web page for 30 days. If no appeal is requested by either the Applicant, or by any member of the public who commented on the application package, the decision becomes final. Any appeals are referred to the Institute's Appeals Panel for review. Certification decisions from the Appeals Panel are referred to the Governing Board, which approves the Appeals Panel's certification decision. A summary of the structure of the Low Impact Hydropower Institute is found in Part II, and the certification procedures are in Part III.

V. MARKETING

In order to protect the consumer and provide the greatest degree of credibility for the Low Impact Hydropower Certification Program, all marketing claims associated with Low Impact Hydropower certification must meet the requirements established for the Certification Program. These requirements can be found in Part V.

VI. LIMITATIONS OF THE LOW IMPACT HYDROPOWER CERTIFICATION PROGRAM

The Low Impact Hydropower criteria have been established as relatively simple objective criteria for distinguishing hydropower in the marketplace. These criteria should not, however, be considered a benchmark for exemplary environmental operations at hydropower facilities. While the criteria are intended to be a national base for evaluating impacts of hydropower, not all environmental impacts associated with hydropower facilities are addressed by the criteria. In addition, while the reliance on resource agency recommendations is designed to create an objective system based on scientific evidence that takes into account site-specific conditions, any specific facility may have unique conditions that require more or less stringent conditions for environmental protection. Thus, supporters of the Low Impact Hydropower criteria, officers and staff of the Low Impact Hydropower Institute and recipients of Low Impact Hydropower certification reserve the right to seek conditions other than those outlined in the Low Impact Hydropower criteria in any legal or administrative proceeding.

Support of the Low Impact Hydropower Certification Program or of the Low Impact Hydropower criteria also does not imply endorsement of any facility certified pursuant to the Certification Program or any resulting power product. Supporters of the Low Impact Hydropower criteria, and officers and staff of the Low Impact Hydropower Institute, reserve the right to individually endorse or otherwise comment upon facilities receiving Low Impact Hydropower certification and resulting power products. In addition, support of the Low Impact Hydropower Certification Program or of the Low Impact Hydropower criteria does not imply endorsement of any level of power consumption. Supporters of the Low Impact Hydropower criteria, and officers and staff of the Low Impact Hydropower Institute, reserve the right to promote energy conservation as an alternative to power generation.

The term Low Impact Hydropower should not imply that a certified facility has no environmental impacts. Not all environmental impacts associated with hydropower facilities are addressed by the criteria. In addition, the certification of some facilities as Low Impact Hydropower does not mean and should not imply that the Low Impact Hydropower Institute or its supporters, officers or staff are labeling other hydropower facilities as high impact.

The Low Impact Hydropower Certification Program is also intended only to aid in differentiating the environmental performance among hydropower facilities. The Institute certifies facilities whose impacts are low compared to other hydropower facilities based on objective scientific environmental criteria. As discussed above, this certification is being provided in order to allow well sited and well operated hydropower facilities to gain market advantage because of the benefits that hydropower provides compared to some other power sources. However, the certification does not compare hydropower generation impacts to the impacts of other forms of power production because the impacts of hydropower are not strictly comparable, in the Institute's view, to the impacts of other generation sources.

The Low Impact Hydropower criteria and other Certification Program requirements are subject to change by the Institute's Governing Board. While no significant changes to the Certification Criteria are anticipated before revisions to the water quality and watershed criteria in 2003, the Governing Board reserves the right to modify the criteria and other Certification Program requirements as needed, following public review and comment.

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PART II ORGANIZATIONAL STRUCTURE

I. INTRODUCTION

The Low Impact Hydropower Institute (“Institute”), an independent, non-profit corporation, will administer the Low Impact Hydropower Certification Program (“Certification Program”). The Certification Program’s goals are to reduce the environmental impacts of hydropower generation, and to create a credible and accepted standard for consumers to use in evaluating hydropower. The Institute’s Governing Board will oversee the certification process. A Certification Administrator will run the day-to-day operations of the Institute and Certification Program, with the assistance of the Application Reviewers. A Hydropower Industry Advisory Panel and a Renewables Advisory Panel will provide input to the Governing Board on the impacts of the Certification Program on the hydropower and non-hydro renewables industry. An Appeals Panel will decide appeals of certification decisions. Members of the Governing Board, the Hydropower Industry Advisory Panel, and the Renewables Advisory Panel are listed in Attachment A.

All members of the Governing Board and Advisory and Appeals Panels will serve in their personal capacity, but with institutional affiliation. Participation on the Board or Panels represents personal support of the goals and objectives of the Low Impact Hydropower Institute (although support of each provision in the criteria is not required). Endorsement of the goals and objectives of the Low Impact Hydropower Institute does not imply endorsement of facilities certified as Low Impact Hydropower or any resulting power product. Individual participation on a Board or Panel does not imply endorsement by the individual’s employer of the goals and objectives of the Low Impact Hydropower Institute.

II. ORGANIZATIONAL STRUCTURE

A. Low Impact Hydropower Institute:

The Low Impact Hydropower Institute is a not for profit corporation chartered to certify facilities meeting the Low Impact Hydropower criteria. The Certification Administrator will oversee the day-to-day activities of the Low Impact Hydropower Institute and the Institute’s Certification Program.

B. Governing Board:

The Low Impact Hydropower Institute's Governing Board will govern the Certification Program. The Governing Board will be comprised of from nine to 21 members. One half or more of the Governing Board members shall be from environmental organizations, and the remainder shall provide a balanced representation from organizations or industry such as: recreational boating, resource agencies, native American tribes, recreational fisheries, commercial fisheries, small consumer advocacy organizations, academic posts or others the Governing Board deems appropriate. The Governing Board will also include an academic with industry interests. Governing Board members will also maintain broad regional representation. Governing Board membership will be of individuals, but they will serve with their organizational affiliation. The Chairs of the Hydropower Industry and Renewables Advisory Panels will participate in Governing Board meetings as non-voting representatives.

When a Governing Board member resigns or his/her term expires, a replacement member will be selected by the Governing Board. Board membership will be voluntary, with expenses covered by the Low Impact Hydropower Institute. Board members will recuse themselves from voting on certification applications where they have a direct financial, legal or administrative interest in the outcome of the decision. The Governing Board will be lead by the Governing Board Chair.

Governing Board decisions on: (1) certification applications and appeals, (2) amendments to Certification Program requirements; and (3) amendments to Institute bylaws will be made by a 2/3 vote of the Board Members present and voting. Decisions on all other matters will be made by a majority of Board members present. A quorum necessary to conduct official Board business will be a majority of members. Board discussions and votes on contested or otherwise controversial certification applications will be held in a public session. The Governing Board may also meet in executive session.

The Governing Board will:

- Appoint and supervise the Certification Administrator;
- Give final approval to all certification decisions;
- Decide policy issues as they arise in pre-application consultation or in individual certification decisions;
- Ensure the certification system meets its goals and objectives;
- Hire technical consultants when needed;
- Set application fees and review annually; and
- Periodically review and amend the Low Impact Hydropower Certification Program requirements as needed.

A list of Governing Board members is included in Attachment A.

C. Certification Administrator:

The Certification Administrator will administer the Low Impact Hydropower Institute and the Institute's Certification Program. The Certification Administrator shall initially be the Executive

Director of the Institute as named by the Institute's Governing Board. The Executive Director may engage staff or contractor(s) to fulfill the duties and responsibilities of the Certification Administrator.

The Certification Administrator will:

- Administer the certification applications;
- Maintain the list of certified Low Impact Hydropower facilities;
- Maintain the web site for the Institute;
- Maintain a list of relevant governmental and non-governmental contacts for mailing notice of applications;
- Serve as fiscal agent for the Low Impact Hydropower Institute;
- Retain and oversee the Application Reviewers;
- Answer questions from the public or Applicants regarding the Certification Program;
- Conduct a pre-application consultation when requested by a potential applicant;
- Compile comments on the Certification Program from Applicants and the public and submit periodic reports on these comments to the Governing Board;
- Maintain and update a report explaining the rationale for the Low Impact Hydropower criteria and interpretations of the criteria as developed by the Governing Board;
- Obtain and maintain Directors' and Officers' liability insurance; and
- Administer meetings and maintain records of the Governing Board, Appeals Panel, Hydropower Industry Advisory Panel, and Renewables Advisory Panel.

D. Hydropower Industry Advisory Panel:

The Hydropower Industry Advisory Panel will advise the Institute's Governing Board on industry concerns related to the Low Impact Hydropower Certification Program, including the criteria; implementation; certification process; technical issues related to hydropower projects, operations and management; and on other matters as requested by the Governing Board. Membership on the Hydropower Industry Advisory Panel shall be at the invitation of the Governing Board. Panel members shall either: (a) Own or lease a hydropower facility; or (b) Be engaged, directly or indirectly, in the manufacture of hydropower equipment; the development, financing, operation, maintenance or marketing of hydropower facilities; or in providing services to the hydropower industry. The Panel will be comprised of nine to 15 members. The Hydropower Industry Advisory Panel will be led by the Advisory Panel Chair, who will sit as a non-voting member of the Governing Board. Advisory Panel meetings will be open to any member of the hydropower industry.

E. Renewables Advisory Panel:

The Renewables Advisory Panel will advise the Institute's Governing Board on concerns related to the Low Impact Hydropower Certification Program's impact on non-hydro renewables, including the criteria, implementation, certification process, and on other matters as requested by the Governing Board. The Renewables Advisory Panel will be comprised of nine to 15 representatives from the non-hydro renewables industry and environmental organizations interested in promoting non-hydro renewables. Membership on the Renewables Advisory Panel

shall be at the invitation of the Governing Board. The Renewables Advisory Panel will be led by a Renewables Advisory Panel Chair, who will sit as a non-voting member of the Governing Board. Advisory Panel meetings will be open to any member of the non-hydro renewables community.

F. Appeals Panel:

The Appeals Panel will hear appeals, by either an Applicant or a member of the public, of preliminary certification decisions made by the Institute's Governing Board. The Appeals Panel will function independently of the Governing Board and make an independent decision about whether a facility should be certified. The Appeals Panel will be comprised of three representatives selected by the Governing Board from a pool of qualified candidates. Appeals Panel members are selected based on their expertise with hydropower and natural resource issues and their ability to objectively evaluate cases concerning the Certification Program. Appeals Panel members will be paid an hourly fee for their services.

G. Technical Assistance:

The Institute's Governing Board may retain technical assistance in its ongoing evaluation of certain aspects of the Certification Program.

H. Application Reviewer:

Application Reviewers with experience on hydropower matters as they pertain to various geographic regions of the country will be appointed by the Governing Board upon recommendation of the Certification Administrator. The Application Reviewers will review each certification application, make necessary inquiries, and make recommendations to the Certification Administrator. The Application Reviewers will also submit comments on appeals. The Application Reviewers will be independent consultants working part time in a paid capacity reviewing certification applications. The Certification Administrator will oversee the work of the Application Reviewers.

Prior to reviewing an application, the Application Reviewer must sign a statement disclosing any past contractual relationships with the Applicant and any other relationship with the Applicant that may affect the Application Reviewer's objectivity or create an appearance of impropriety. If an Application Reviewer has a current contractual relationship with the Applicant or knows any confidential information about the Applicant based on past contractual relationships, the Application Reviewer is barred from participating as an Application Reviewer on any application of that Applicant. If the Certification Administrator concludes that other current or past relationships between the Application Reviewer and Applicant may affect the Application Reviewer's objectivity or create an appearance of impropriety, it may either recuse the Application Reviewer from the application review or request that the Governing Board (with input from the Advisory Panels) determine the Application Reviewer's ability to participate.

I. List of Low Impact Hydropower Certification Program Supporters:

The Low Impact Hydropower Institute will retain a list of Low Impact Hydropower Certification Program Supporters. This list will consist of any organization, company or individual that wishes to go on the record as endorsing the goals and objectives of the Low Impact Hydropower Certification Program. Endorsement of the Certification Program's goals and objectives or any other support of the Low Impact Hydropower Institute does not imply endorsement of individual hydropower facilities meeting the criteria or any resulting power product. A list of Low Impact Hydropower Program Supporters is included as Attachment B.

J. Funding of Low Impact Hydropower Institute

The Low Impact Hydropower Institute will be funded in part by application fees paid with each certification application, and in part by grants from government and charitable foundations. Any fees collected in excess of expenses will be reimbursed to applicants through a system determined by the Governing Board.

The level of fee for application for re-certification will be developed by the Governing Board and will differ from the fee for initial application. The Governing Board will periodically review the level of both the Application Fee and Re-Certification Application Fee.

The level of Application Fee for each Applicant is determined by the average annual generation of the facility (see Attachment C). The fee level for a consolidated application¹ will include a base charge for the total average annual megawatts included in the consolidated application based on the fee schedule in Attachment C, plus a \$2,000 fee for each dam included within the application. For example, if an Applicant submits a consolidated application for five dams it owns on one river totaling 54 average annual megawatts, the Application Fee would be \$18,500 (the application fee for a single dam of 54 average annual megawatts) plus \$10,000 (\$2,000 for each of the five dams in the application) for a total fee of \$28,500.

Application Fees are provided in Attachment C.

¹ A consolidated application may be submitted by an Applicant that owns or operates multiple facilities in a watershed that are operationally or hydrologically connected. See Part III, Section II.A.1 for a discussion of consolidated applications.

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PART III CERTIFICATION PROCEDURES

I. SUMMARY OF THE LOW IMPACT HYDROPOWER CERTIFICATION PROCEDURES

A. Certification Process:

The Low Impact Hydropower Institute's procedures for determining Low Impact Hydropower certification are designed to be a fair and efficient process for determining whether a hydropower facility has impacts that are low compared to other hydropower facilities based on objective environmental criteria. The Institute is committed to processing applications, especially those that are non-complex or controversial, in as prompt a fashion as possible.

Prior to submitting an application, a potential applicant is encouraged to contact the Certification Administrator for a confidential pre-application consultation. The certification process will be initiated when the owner or operator of a hydropower facility submits an application package, consisting of a completed questionnaire and supporting materials, to the Institute. Early emphasis of the Certification Program will be on facilities in New England and the Pacific Northwest, although applications will be accepted for certification of facilities in other regions.

The Certification Administrator will post complete application packages on the Institute's Web page and accept public comments on the application for 60 days. The Administrator will forward the package, comments received, and any response from the Applicant to an Application Reviewer. The Application Reviewer will review the application, conduct any necessary factual investigation and make a recommendation to the Certification Administrator as to whether certification should be granted. The Governing Board, upon recommendation of the Certification Administrator, will make a preliminary decision as to whether the facility should receive certification. The preliminary certification decision will be posted on the Institute's Web page for 30 days. At the end of that time, if no appeal is requested, the decision will become final and the certification will be issued or denied. If an appeal is made by either the Applicant or by a member of the public who had commented on the certification application, the Appeals Panel will review the application and make a decision regarding certification. The Appeals Panel decision will be referred to the Governing Board for final approval of the certification decision.

B. Use and Terms of Certification:

Certification is designed to provide consumers with assurance that a facility has impacts that are low compared to other hydropower facilities based on objective environmental criteria. Certification entitles power from the facility to be marketed as certified Low Impact Hydropower. All marketing claims referring to the Low Impact Hydropower certification must meet the Certification Use Requirements contained in Part V.

C. Public Availability of Certification Information:

An important component of the Institute's goals and objectives is to make certification decisions based on information that is open to public review and comment. Pre-application consultation materials will be kept confidential, unless and until a certification application is submitted. Any determinations made by the Governing Board on interpretations or other policy questions referred to the Governing Board by the Certification Administrator during pre-application consultation will be made public, although the name of the subject project and potential applicant will not. The Board, in its sole discretion, may seek public review and comment on such questions before deciding.

Except in rare circumstances, all information pertaining to a certification application provided to the Certification Administrator will be available for public review, either on the Institute's Web page or, for lengthy documents, for review upon request. The Certification Administrator has discretion to keep information confidential, but this will only be done in rare and justified circumstances. Governing Board debate and voting on contested or otherwise controversial certification applications will be conducted at an open meeting (either in person or by phone). The Governing Board may meet in executive session when needed. The Certification Administrator will maintain a list of interested parties that will receive notice of all postings for public comment.

D. Compliance:

Certified facilities shall file an annual statement with the Certification Administrator confirming that in the preceding year, there has been no relevant change in conditions, violations of the Low Impact Hydropower criteria or Certification Use Requirements, and no receipt of a relevant notice of violation from a government agency.

Certified facilities shall report to the Certification Administrator as soon as possible any relevant change in conditions, violations of the Low Impact Hydropower criteria or Certification Use Requirements, or receipt of a relevant notice of violation from a government agency. Any other party may also notify the Certification Administrator of a violation or change in conditions. If the Governing Board finds that a certified facility has committed a significant violation of the Low Impact Hydropower criteria or Certification Use Requirements, or if the Governing Board finds that a material misrepresentation of fact was made in any submission from an Applicant, the Governing Board shall revoke the certification and/or take other actions to appropriately penalize the Applicant.

E. Term and Renewal of Certification:

Certification shall be valid for a period of five years. To renew a certification, the holder of a Low Impact Hydropower certification shall submit a renewal application package to the Certification Administrator. If there have been no material changes at the facility that would affect the certification and if the criteria have not been revised, renewal will be granted. If there have been material changes or the criteria have been revised, the application will be reviewed in a process similar to an initial application.

F. Governing Board Review of Certification Program Requirements:

The Governing Board will annually review the Low Impact Hydropower Certification Program to determine whether it is meeting its goals and objectives. The Governing Board will develop, with input from the Hydropower Industry Advisory Panel, the Renewables Advisory Panel, and the general public, a long-term plan for the Certification Program. Through an annual review, the Governing Board will decide, with input from the Hydropower Industry Advisory Panel, the Renewables Advisory Panel, and the general public, whether to revise Certification Program requirements. Any revisions will be developed with a specific schedule for implementation.

II. CERTIFICATION PROCESS

A. Certification Review and Approval:

1. Pre-Application Consultation

Interested potential applicants to the program are encouraged to contact the Certification Administrator to discuss the certification process and application requirements in advance of submission. This consultation is confidential, and will be without charge unless the Governing Board determines at a later date that a fee for this service should be charged given demands on staff time. (Any such fee would not be charged without an opportunity for public review and comment, and would not be retroactive).

The purpose of the pre-application consultation is to help the potential applicant understand the certification program and how it applies to the specific Facility, and to help the potential applicant provide the most complete and focused application possible. The Certification Administrator can identify possible issues or concerns that the application should focus on.

The Certification Administrator cannot make any determinations as to certification results, but the Certification Administrator can refer policy or interpretation questions raised by the pre-application review to the Governing Board for a decision. The Board may decline to address such questions in the pre-application phase. Any Board decision on a policy or interpretation question raised by pre-application consultation will be made public, but the potential applicant and the specific project will not be identified. (Because such decisions would be made outside of an application for certification, the decision would not be subject to appeal unless an applicant formally applied for certification, and the Board utilized the policy interpretation in the certification decision. Then, per the current program requirements, any public commenter on the

application could appeal the Board’s decision, and the reasoning relied upon in making that decision. This does not preclude the Board from seeking public input and comment on any policy interpretations in advance of any specific application if it so desires, but this will be at the sole discretion of the Board.)

At the end of the pre-application consultation, the potential applicant can elect to submit a completed application in accordance with the following requirements, or may elect not to proceed.

2. Submission of Application Package: To initiate an application process, an Applicant must submit to the Certification Administrator a complete Application Package. For a single Facility, the Application Package will consist of:

- a) Completed Low Impact Hydropower Certification Questionnaire (see Part VI).
- b) Supporting information for each of the relevant questions in the Low Impact Hydropower Certification Questionnaire. In general, supporting information will consist of three elements for each question:
 - (i) A brief narrative description of how the facility meets that particular requirement.
 - (ii) Documentation of the relevant standard (usually an agency recommendation). The instructions for each question provide guidance on the information needed to document the relevant standard for that question.
 - (iii) Where relevant, documentation that the facility is meeting that standard. The instructions for each question provide guidance on the information needed to document compliance with the relevant standard for that question. Where appropriate, supporting documentation should include excerpts from the operating procedures manual for each project or operational records that demonstrate compliance. Some Federal Energy Regulatory Commission (“FERC”) project owners with newer licenses are required to provide annual compliance reports to FERC that will suffice for documentation (if the relevant standard is part of a FERC license). The Applicant will provide relevant excerpts from documents and be prepared to send whole documents on request.
- c) Additional information requested in the “Background Information” section of the Low Impact Hydropower Certification Questionnaire.
- d) Optional information that the Applicant may wish to include, such as:
 - (i) ISO 14000 certification or copy of Environmental Management System.
 - (ii) Letters of support from resource agencies or other stakeholders.
 - (iii) A copy of other environmental certifications pertinent to the facility.
 - (iv) Information about any relevant resource management plans, habitat conservation plans, biological operating plans, memoranda of understanding or agreement. Whole documents are not intended here but may be requested

by the Certification Administrator.

e) A sworn statement from an officer of the Applicant that the material presented in the application is true and complete. For applications for pre-operational certification of a “new” facility (see Part IV, Section A.2), the Applicant must also acknowledge that the Institute may suspend or revoke the certification should the impacts of the project once operational cause non-compliance with the certification criteria.

f) A waiver of liability signed by an officer of the Applicant stating: “The primary goal of the Low Impact Hydropower Institute’s Certification Program is public benefit. The Governing Board and its agents are not responsible for financial or other private consequences of its certification decisions. The undersigned Applicant agrees to hold the Low Impact Hydropower Institute, the Governing Board and its agents harmless for any decision rendered on this or other applications or on any other action pursuant to the Low Impact Hydropower Institute’s Certification Program.” and

g) The application fee. The level of application fee for each applicant will be calculated on a dollar charge based on the average annual generation of the facility. Fees for the first year of operation will be based on the formula included in Attachment C.

If an Applicant owns or operates multiple facilities in a watershed that are operationally or hydrologically connected, the Applicant may choose to submit a consolidated application for those facilities. For a consolidated application, the Application Package must include a completed Low Impact Hydropower Certification Questionnaire and a consolidated application fee. However all other information described above can be submitted in a consolidated manner.

3. Completeness Review: The Certification Administrator will accept an Application Package from an Applicant, review it for completeness and request any missing information.

4. Posting Application Package: Once the Application Package is complete, the Administrator will post the full package on the Institute’s Web page.² The Administrator will notify all governmental and non-governmental contacts identified in the Application Package that the Application Package has been posted. The Administrator will also maintain a list of relevant governmental and non-governmental contacts in differing regions and will send notification of the posting of the Application Package to this list.³ These notices will inform parties that they may obtain a hard copy of an application package from the Certification Administrator. The Certification Administrator will assign an Application Reviewer to the application and forward the complete application to him or her. Once posted on the Web, any individual or organization may within 60 days submit comments on the Application Package to the Certification

² An Applicant can petition the Certification Administrator to keep part of the application off of the Web posting if the Applicant believes the information is confidential. The Certification Administrator will grant requests to keep information confidential upon a strong showing of need for confidential status and only if the material is not a critical component of the Certification Application.

³ This list will be generated from relevant government contact lists, conservation directories, and FERC mailing lists, and will be updated with names of any parties requesting general notification of applications.

Administrator. The Applicant may respond to these comments. All comments and responses will also be posted on the Institute's Web page.

5. Application Review: The Application Reviewer will examine the Application Package and any comments received on that package, and will make any necessary inquiries (e.g., to local resource agencies and NGOs) to resolve factual disputes, evaluate the veracity of claims, or make other inquiries as needed. The Application Reviewer will then submit a written report to the Certification Administrator recommending whether the facility should be certified as Low Impact Hydropower and outlining the basis for that decision. This review is expected to take approximately 60 days.

6. Preliminary Certification Decision: Based on the Application Reviewer's report, the Certification Administrator will make a certification recommendation to the Governing Board whether the Applicant's facility should be certified. If the Certification Administrator's recommendation is different than the Application Reviewer's, the recommendation will include an explanation for the change of recommendation. The Governing Board will issue a Preliminary Certification Decision based on the Certification Administrator's recommendation. The Governing Board may make Preliminary Certification Decisions via e-mail on certification recommendations that are uncontested, uncontroversial and raise no policy issues. Otherwise, the Governing Board shall discuss and make a Preliminary Certification Decision at the next Governing Board meeting or via special telephone meeting (that is open to the public). This process is expected to take approximately 30 days.

7. Notice of Preliminary Certification Decision: If the Preliminary Certification Decision is to certify the facility, that decision, along with the Application Reviewer's report and (if prepared) report of the Certification Administrator, will be posted on the Institute's Web page for 30 days. Notice of the posting will be provided to all individuals or organizations that commented on the initial Application Package ("Commenter"). If the Preliminary Certification Decision is to reject the certification application, the Certification Administrator will notify the Applicant in writing of the decision and reasons for rejection.

8. Certification Approval and Notice: If within 30 days of a Preliminary Certification Decision to certify no appeal is requested, the Certification Administrator will issue a Low Impact Hydropower Certification for the facility and post a notice of certification on the Institute's Web page. The Certification Administrator shall also send a notice of the certification both to all Commenters and to all stakeholders and government agencies identified by the Applicant or the Application Reviewer. This notice shall request that these parties notify the Certification Administrator if they become aware of any violation of the certification criteria or Certification Use Requirements.

B. Appeal (Optional):

1. Response to Notice (If the Preliminary Certification Decision is to Certify): If desired, any Commenter may submit within 30 days of the posting of the Preliminary

Certification Decision on the Institute's Web page a letter to the Certification Administrator requesting an appeal. An appeal request must include specific reasons why the hydropower facility should have failed one or more criteria. If an individual or organization did not comment on the initial Application Package, they may not file an appeal.

2. Response to Notice (If the Preliminary Certification Decision is Not to Certify): If desired, the Applicant may respond within 30 days to the notice of rejection either by: (a) mitigating the reasons for rejection and submitting a letter to the Certification Administrator explaining the changes the hydropower facility has made to come into compliance with the criteria; or (b) submitting a letter requesting an appeal and setting forth specific reasons why the hydropower facility should have passed the criteria.

3. Appeal: Applications will undergo an appeal in the event of an appeal request by either an Applicant or a Commenter. The Certification Administrator will constitute an Appeals Panel and forward the full certification application file to the Panel members. The Application Reviewer will review the appeal letter from the Applicant or Commenter and submit a written report to the Certification Administrator and the Appeals Panel that comments on the merits of the appeal. This process is expected to take 30 days.

4. Appeals Panel Review: When a certification application is referred to the Appeals Panel, the Appeals Panel shall review the Application Package and subsequent comments and reports, and make any needed inquiries. The Appeals Panel will hold a meeting to discuss and decide the appeal. Appeals Panel meetings can be in person or by phone. Decisions by the Appeals Panel will be made by majority vote. The Appeals Panel will function independently of the Governing Board and make an independent decision about whether a facility should be certified. Appeals Panel decisions will be rendered in writing to the Certification Administrator and the Governing Board and will include identification of both the issues of fact and the interpretations of the Low Impact Hydropower criteria and other policy matters that the Appeals Panel decided in order to render its decision. This process is expected to take 60 days.

5. Final Certification Decision: The Governing Board will review Appeals Panel decisions to ensure that the decision is consistent with the Governing Board's interpretation of the Low Impact Hydropower criteria and other policy matters. The Governing Board will give great deference to the Appeals Panel on factual matters. An Appeals Panel decision will be deemed approved by the Governing Board if the Governing Board takes no action within 30 days of notice of the Appeals Panel decision. The Governing Board will provide special review of appeals when: (a) They are flagged by the Appeals Panel or Certification Administrator for special Governing Board review; (b) The Applicant or a Commenter requests special review and the Governing Board decides that the special review request has merit; or (c) A member of the Governing Board so requests.

6. Notice of Certification Decision: If the Governing Board approves an Appeals Panel decision to certify a facility, either through a tolling of the 30-day deadline or after special review, the Certification Administrator will then issue a Low Impact Hydropower certification for the facility and post a notice of certification on the Institute's Web page. The Certification

Administrator shall also send a notice of the certification both to all Commenters and to all stakeholders and government agencies identified by the Applicant or the Application Reviewer. This notice shall request that these parties notify the Certification Administrator if they become aware of any violation of the Low Impact Hydropower Criteria or Certification Use Requirements. For rejected applications, the Certification Administrator will notify the Applicant in writing of the decision and reasons for rejection.

C. Withdrawal of Application (Optional)

At any time within the application or appeal process, an Applicant may withdraw its application from consideration. If such a withdrawal occurs, the final status of the application in public Institute documents shall be described as withdrawn. This withdrawal shall be without prejudice. The Applicant may resubmit an Application Package at any time. If the application is withdrawn early in the application review process, the Applicant may petition the Governing Board for a refund of part of the Application Fee. Refunds will be granted at the sole discretion of the Governing Board. If an Applicant withdraws an application and later resubmits an Application Package, a new Application Fee will be required.

III. COMPLIANCE

A. Notification of Potential Non-Compliance:

A holder of a Low Impact Hydropower certification must notify the Certification Administrator as soon as possible if at any time one or more of the following occurs: (1) A violation of the Low Impact Hydropower criteria; (2) A violation of the Certification Use Requirements; (3) A change in conditions relevant to the certification; or (4) The receipt of a notice of violation or non-compliance relevant to the facility's certification from any government agency. Any other party may also notify the Certification Administrator of the occurrence of one or more of these conditions. The notification may include an explanation as to why the violation or change in conditions does not amount to a significant violation warranting penalties.

B. Review of Potential Non-Compliance:

The Application Reviewer will review the alleged violation or change in conditions, make any necessary inquiries, and, if necessary, request additional information from the certified facility. This request for additional information may include a facility inspection by the Application Reviewer. The Application Reviewer will submit a written report to the Certification Administrator regarding whether a compliance violation has occurred. Based on this report, the Certification Administrator will make a recommendation regarding compliance and penalties to the Governing Board. The Governing Board will determine what compliance action is appropriate. Standards for compliance and penalties for non-compliance are provided in Part V.

C. Annual Statement:

A holder of a Low Impact Hydropower certification must submit a statement to the Certification Administrator confirming that during the preceding year, there has been: (1) no violation of the

Low Impact Hydropower criteria; (2) no violation of the Certification Use Requirements; (3) no change in conditions relevant to the certification; and (4) no receipt of notice of violation or non-compliance relevant to the facility's certification from any government agency. The statement must be submitted within 30 days of the anniversary date of the certification. Failure to file an annual statement, or a material misrepresentation contained in the statement may result in revocation of the certification.

IV. RENEWAL OF CERTIFICATION

A. Re-Certification Application:

At the end of the certification period, a holder of a Low Impact Hydropower certification may apply for re-certification by completing and submitting a Re-Certification Application Package. This package will consist of:

1. A short questionnaire to determine if any material changes have occurred in the Certification term that would affect the certification;
2. If there are material changes, completed information regarding the relevant questions on the original certification questionnaire and supporting documentation;
3. If there have been changes in the Low Impact Hydropower criteria, completed information regarding the new or revised questions on the original certification questionnaire and supporting documentation;
4. A sworn statement from an officer of the Applicant that the material presented in the Re-Certification Application Package is true and complete;
5. A waiver of liability signed by an officer of the Applicant stating: "The primary goal of the Low Impact Hydropower Institute's Certification Program is public benefit. The Governing Board and its agents are not responsible for financial or other private consequences of its certification decisions. The undersigned Applicant agrees to hold the Low Impact Hydropower Institute, the Governing Board and its agents harmless for any decision rendered on this or other applications or on any other action pursuant to the Low Impact Hydropower Institute's Certification Program." and
6. An application fee. The level of fee for application for re-certification will be developed by the Governing Board and will differ from the fee for initial application.

B. Re-Certification Review:

The Certification Administrator will post the Re-Certification Application Package on the Institute's Web page and notify all parties so requesting that it has been posted. Once posted, any individual or organization may within 60 days submit comments on the Re-Certification Application Package to the Certification Administrator. If no material changes have occurred (either identified by the Applicant or by a Commenter) and the Low Impact Hydropower criteria

have not been revised, the Certification Administrator will issue a Low Impact Hydropower certification and post notice of the certification on the Institute's Web page. If material changes have occurred and/or if the Low Impact Hydropower criteria have been revised, the Administrator will review the package and renew the certification according to the process for the initial certification.

V. GOVERNING BOARD REVIEW OF CERTIFICATION PROGRAM:

A. Board Review:

The Institute's Governing Board will annually review the Certification Program to ensure that it is meeting its goals and objectives. Amendments and revisions to Certification Program requirements may be made upon a 2/3 majority of the Governing Board members present and voting. The Governing Board will periodically review the goals, objectives and accomplishments of the Certification Program to ensure that the Program should continue to exist.

B. Review Process:

1. Long Term Planning. The Governing Board will approach revisions to Certification Program requirements with a long-term view based on a 5 to 10 year future planning window. The Governing Board will develop a Long Term Plan for the Certification Program, in consultation with the Advisory Panels and with an opportunity for public comment. The Long Term Plan will require the Governing Board to take a long-term view of the Certification Program, and will enable future planning by dam owners. The Governing Board will seek to make revisions to Certification Program requirements consistent with the Long Term Plan, but will not be prevented from making revisions inconsistent with the Long Term Plan. Any changes to the Long Term Plan will be made using the Annual Review, Revisions and Implementation processes described below. The Governing Board may also periodically hire an outside consultant to review the Certification Program.

2. Annual Review. The Low Impact Hydropower criteria, other Certification Program requirements and the Long Term Plan will be reviewed at least annually by the Governing Board to ensure that they continue to meet the goals and objectives of the Low Impact Hydropower Certification Program. This review will examine certified and rejected applications, the power market, the effectiveness of the certification procedures and institutions, and other relevant information. The review will be based on: (a) the Governing Board's own judgment; (b) comments from the Hydropower Industry Advisory Panel and the Renewables Advisory Panel; and (c) comments from the public. Annual reviews will take place during the first quarter of each year.

3. Revisions.

a) Proposed Revisions: If, based on the Annual Review, the Governing Board concludes that changes to the Low Impact Hydropower criteria and/or other Certification Program requirements are indicated, the Governing Board will develop proposed

revisions and a proposed implementation schedule. The Governing Board may also propose to disband the Certification Program.

b) Consultation with Advisory Panels: The Governing Board will consult with the Hydropower Industry Advisory Panel and the Renewables Advisory Panel about the proposed revisions and implementation schedule. The purposes of consultation with the Panels are: (i) To identify a feasible implementation timetable for the proposed changes, (ii) To gauge the financial and operational impacts of the changes on the hydropower industry, (iii) To determine the impact on non-hydro renewables of the proposed changes, and (iv) To discuss any other potential changes that should be incorporated with the proposed changes to allow for economies of scale. The Governing Board may determine that the proposed revisions are not feasible and end the Revisions process.

c) Public Comment: After consultation with these two Panels, the Governing Board will draft revisions to the Certification Program and prepare the draft implementation schedule. The Certification Administrator will post notice of the proposed revisions and implementation schedule on the Institute's Web page, and will send notice to current certified facilities and other interested parties. The notice will request comment within 60 days.

d) Finalize Revisions: Based on comments received, the Governing Board will finalize both the revisions to Certification Program and the implementation schedule. The Governing Board may determine that the proposed revisions are not feasible and end the Revisions process. If no revisions are made, the Certification Administrator will post a notice of this decision on the Institute's Web page and notify the current certified facilities and any other commenters.

4. Implementation.

a) Notice of Revisions: If revisions are made, the Certification Administrator will post the final revisions and implementation schedule on the Institute's Web page and notify the current certified facilities and any other commenters. The Certification Administrator will also reissue the revised Certification Program requirements and Long Term Plan, reflecting the revisions. These will also be posted on the Institute's Web page. The Certification Administrator shall reissue the Certification Program requirements and Long Term Plan by the end of the third quarter each year.

b) Applicability of Revisions to Applicants: Any facility seeking initial certification or re-certification must meet the deadline for revisions in the implementation schedule. If a facility cannot meet the deadlines in the implementation schedule, they will be denied certification or re-certification.

LOW IMPACT HYDROPOWER INSTITUTE

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LOW IMPACT HYDROPOWER CERTIFICATION PROGRAM

PART IV APPLICABILITY OF LOW IMPACT HYDROPOWER CRITERIA

As presently formulated the Low Impact Hydropower criteria are not applicable to all types of hydropower. As a result, some facilities are not eligible for certification. The following describes which facilities are eligible for certification.

A. Existing and New Hydropower

The Low Impact Hydropower criteria apply to:

(1) *Existing hydropower facilities*: any facility (dam and powerhouse) generating electricity as of August of 1998; and

(2) *“New” hydropower facilities-- existing dams that added or increased power generation capacity after August of 1998*: any dam existing in August of 1998 (whether or not used for generating electricity at that time) that added or increased power generation capacity that began generating or will begin generating electricity after August of 1998 (whether by addition of generating equipment, efficiency upgrades to existing equipment, or other means), provided the added or increased capacity:

(i) was created by modifications or additions to the existing facility (that is, modifications or additions to the existing dam, and/or if applicable, existing powerhouse) and did not require or include any new dam or other diversion structure; and

(ii) the added or increased capacity did not include or require a change in water flow through the facility that worsened conditions for fish, wildlife, or water quality (for example, operations did not change from run-of-river to peaking); and

(iii) the existing dam had not been recommended for removal or decommissioning by resource agencies, or recommended for removal or decommissioning by a broad representation of interested persons and organizations in the local and/or regional community prior to the added or increased capacity. Exceptions to this rule will be considered but only upon a showing that the added or increased capacity resulted in specific measures to improve fish, wildlife, or water quality protection at the existing

dam.

“New” hydropower facilities that are not yet generating electricity at the time of application for certification are eligible for consideration, provided the FERC license or exemption, or similar authorization addressing environmental impacts has been issued, there are no pending appeals or litigation from that authorization, and the applicant specifically acknowledges that LIHI may suspend or revoke the certification should the impacts of the project once operational cause non-compliance with the certification criteria. For such pre-operations certification, the certification term will begin when certification is completed, not when operations start. Applicants will also be charged a fee premium for pre-operations certification (see fee schedule).

At a later date, the Governing Board may develop separate, more stringent, criteria to certify new hydropower dams.

B. International Hydropower Facilities:

The Low Impact Hydropower criteria do not apply to facilities located outside of the United States. At a later date, the Governing Board may revise the current criteria to apply to hydropower facilities outside of the United States that could sell their power within the United States.

C. Pumped Storage Facilities:

The Low Impact Hydropower criteria do not apply to pumped storage facilities.

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PART V

CONDITIONS FOR USE OF CERTIFICATION

I. TERM OF CERTIFICATION

The term of a Low Impact Hydropower certification is five years from the date of designation. The date of designation for pre-operations certification of a “new” facility (see Part IV, Section A.2) is the date of certification, not the date operations begin.

II. IMPACT OF CERTIFICATION

Any hydropower facility certified through the process described in Part III above will receive the Institute’s Low Impact Hydropower certification. Certification is intended to provide consumers with assurance that an independent panel has determined that a hydropower facility is well sited and well operated in accordance with eight objective and scientific environmental criteria. Facilities with the Low Impact Hydropower certification may be advertised as holding such certification so long as the requirements in Section III below are met.

The Low Impact Hydropower certification only certifies that the individual facility meets the Low Impact Hydropower criteria. It does not certify or endorse an electricity product, nor does it indicate that members of the Low Impact Hydropower Governing Board or Low Impact Hydropower Certification Program Supporters endorse the individual facility or any resulting power product. It also does not imply that the Low Impact Hydropower Institute or its supporters, officers or staff are labeling other hydropower facilities as high impacts. The Low Impact Hydropower certification may be used as a requirement by other programs endorsing or certifying power products in the market. The Low Impact Hydropower Institute encourages certified facilities to use these additional programs to obtain endorsement of power products.

III. CERTIFICATION USE REQUIREMENTS

A. Federal Trade Commission Principles:

Any use of a Low Impact Hydropower certification must follow the principles established by the Federal Trade Commission in its Guides for the Use of Environmental Marketing Claims, 16 C.F.R. Part 260. Under the Federal Trade Commission principles, all environmental claims used in advertising must:

1. Be factually based (and objectively verifiable to the extent technically possible);

2. Not overstate environmental attributes or benefits, expressly or by implication;
3. Present comparative claims in a manner that makes the basis for the comparison sufficiently clear to avoid customer deception; and
4. Ensure that any necessary qualifiers or disclaimers be sufficiently clear and prominent to prevent deception.

B. Language for Describing a Certified Low Impact Hydropower Facility:

The following is acceptable language for describing a certified Low Impact Hydropower facility. This language must accompany all claims of Low Impact Hydropower certification. This language must be clear and prominent and in close proximity to the claims of Low Impact Hydropower certification. Any modifications to descriptions must be pre-approved by the Low Impact Hydropower Institute pursuant to Section E below.

This product includes Low Impact Hydropower from facilities certified by the Low Impact Hydropower Institute (an independent non-profit organization) to have environmental impacts in key areas below levels the Institute considers acceptable for hydropower facilities. For more information about the certification, please see www.lowimpacthydro.org.

C. Language for Referring to Supporters of the Low Impact Hydropower Certification Program

As discussed above, an organization, company or individual may become a Low Impact Hydropower Certification Program Supporter by endorsing the goals and objectives of the Low Impact Hydropower Certification Program. Endorsement of the Certification Program's goals and objectives or any other support of the Low Impact Hydropower Institute does not imply endorsement of individual hydropower facilities meeting the criteria or any resulting power product, nor does endorsement imply the labeling of other hydropower facilities as high impact.

Any reference to individuals, companies or organizations that are Low Impact Hydropower Certification Program Supporters or that otherwise support the Low Impact Hydropower Institute, must include the disclaimer provided below. This disclaimer must be clear and prominent and in close proximity to the reference to supporting individuals, companies or organizations.

The following organizations support the goals and objectives of the Low Impact Hydropower Certification Program [or otherwise support the Low Impact Hydropower Institute (add if relevant)]. Certification of a facility as Low Impact Hydropower does not imply endorsement of that facility or any resulting power product by any of these organizations.

D. Language Use:

It is expected that language referring to the Low Impact Hydropower designation and supporters will appear only in written materials related to the certified facility or to power generated from the facility. Any use of the certification other than that consistent with these Certification Use Requirements must be pre-approved by the Low Impact Hydropower Institute pursuant to Section E below.

E. Approval of Alternative Language and Claims:

The Low Impact Hydropower Institute must pre-approve the language regarding the Low Impact Hydropower Institute or Certification Program in any press release or product marketing materials that departs from the pre-approved language for describing the Low Impact Hydropower Certification Program or Supporters.

IV. COMPLIANCE OBLIGATIONS AND PENALTIES FOR NON-COMPLIANCE

Facilities certified as Low Impact Hydropower must maintain compliance with all Low Impact Hydropower criteria (see Part VI below) and with the Certification Use Requirements (see Part V Section III above). If the Governing Board finds that a certified facility has committed a significant violation of these requirements, or if the Governing Board finds that a material misrepresentation of fact was made in any submission from an Applicant, the Governing Board shall:

- A. Revoke the Low Impact Hydropower certification;
- B. Bar the holder of the Low Impact Hydropower certification from re-applying for five years;
- C. Require the holder of the Low Impact Hydropower certification to notify immediately its current customers that its certification has been revoked, and, if its customer does not deliver power to the ultimate retail customer, to notify immediately the retail marketer; and/or
- D. Require any entity marketing power from the facility immediately to stop employing the Low Impact Hydropower certification in its marketing unless it can find other supply that is certified Low Impact Hydropower.

In unusual circumstances, the Governing Board has the authority to require additional penalties as it deems appropriate.

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LOW IMPACT HYDROPOWER CERTIFICATION PROGRAM

ATTACHMENT A GOVERNING BOARD MEMBERS

Governing Board Chair:

Richard Roos-Collins, Natural Heritage Institute (CA)

Governing Board Members:

Stephen Crow, Northwest Power Planning Council (OR)

Andrew Fahlund, American Rivers (DC)

Ashok Gupta, Natural Resources Defense Council (NY)

Kenneth Kimball, Appalachian Mountain Club (NH)

Nancy Ryan, Environmental Defense (CA)

Steven Malloch, Consultant (WA)

Edward R. Osann, Potomac Resources, Inc. (DC)

Michael Sale, Oak Ridge National Laboratory (TN)

Sam Swanson, Renewable Energy Technology Analysis Project (VT)

Non-Voting Board Members:

Phil Raphals, Helios Centre, Quebec, Canada, Renewables Advisory Panel Chair

Corinne Grande, Seattle City Light (WA), Hydropower Industry Advisory Panel Co-Chair

Andrew Sims, Kleinschmidt (ME), Hydropower Industry Advisory Panel Co-Chair

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LOW IMPACT HYDROPOWER CERTIFICATION PROGRAM

ATTACHMENT B LOW IMPACT HYDROPOWER CERTIFICATION PROGRAM SUPPORTERS

The following organizations support the goals and objectives of the Low Impact Hydropower Certification Program. Certification of a facility as Low Impact Hydropower does not imply endorsement of that facility or any resulting power product by any of these organization

American Rivers

American Whitewater

Appalachian Mountain Club

Angus Duncan, E.D. Bonneville

Environmental Foundation

California Trout, Inc.

Center for Resource Solutions

For The Sake of Salmon

GreenMountain.com

Idaho Rivers United

Natural Heritage Institute

Natural Resources Defense Council

Nez Perce Tribe

New York Rivers United

Northwest Sport Fishing Industry Assn.

NW Energy Coalition

The Power Scorecard Project Team (Pace Energy Project)

Michael J Sale, PhD - Oak Ridge National Laboratory

Save Our Wild Salmon Coalition

Michigan Hydro Relicensing Coalition

River Alliance of Wisconsin

Save Our Wild Salmon Coalition

Seattle City Light

Trout Unlimited

Union of Concerned Scientists

U.S. Generating Company

WaterWatch of Oregon

The Certification Program's goals are to: (1) Reduce the environmental impacts of hydropower generation by (2) creating a credible and accepted standard for consumers to use in evaluating hydropower. The objective is to require hydropower certified facilities to meet eight criteria related to: (1) River flows, (2) Water quality, (3) Fish passage and protection, (4) Watershed protection, (5) Threatened and endangered species protection, (6) Cultural resource protection, (7) Recreation, and (8) Facilities recommended for removal.

An organization, company or individual may join this endorsement list and become a Low Impact Hydropower Certification Program Supporter by endorsing the goals and objectives of the Low Impact Hydropower Certification Program. To become an endorser, please contact Lydia Grimm, Executive Director, at the address above. Endorsement of the Certification Program's goals and objectives or any other support of the Low Impact Hydropower Institute does not imply endorsement of individual hydropower facilities meeting the criteria or any resulting power product.

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LOW IMPACT HYDROPOWER CERTIFICATION PROGRAM

ATTACHMENT C APPLICATION FEE SCHEDULE

PRODUCTION FEE SCHEDULE:

Average Annual MW*	Average Annual Generation Gigawatt hours**	Fee
0-5	0 to 43.8	\$2,500
6-10	43.9 to 87.6	\$5,000
11-15	87.7 to 131.4	\$7,500
16-25	131.5 to 219.0	\$10,250
26-35	219.1 to 306.6	\$13,000
36-45	306.7 to 394.2	\$15,750
46-55	394.3 to 481.8	\$18,500
56-65	481.9 to 569.4	\$21,000
66-75	569.5 to 657.0	\$23,000
76-85	657.1 to 744.6	\$25,500
86-95	744.7 to 832.2	\$27,500
96-105	832.3 to 919.8	\$30,000
106-115	919.9 to 1,007.4	\$32,500
116-125	1,007.5 to 1,095.0	\$35,000
126-135	1,095.1 to 1,183.0	\$37,500
136-145	1,183.1 to 1,270.2	\$40,000
146-155	1,270.3 to 1,357.8	\$42,500
156-165	1,357.9 to 1,445.4	\$45,000
166-175	1,445.5 to 1,533.0	\$47,500
176-185	1,533.1 to 1,620.6	\$50,000
186-195	1,620.7 to 1,708.2	\$52,500
196-205	1,708.3 to 1,795.8	\$55,000
205+	1,795.9 and above	\$57,500

*Average annual megawatts are calculated as follows: [(average annual generation) / (installed capacity * 8760 hours)] * installed capacity.

**1 gigawatt hour=1,000 megawatt hours= 1 million kilowatt hours

APPLICATION FEE FORMULA:

Single Facility Application: Fee= Production Fee

Consolidated Application (Multiple Facilities): Fee = Production Fee + \$2,000 per dam

Average annual generation (for determination of the production fee) shall be calculated based on the ten-year average preceding the date of application. For capacity added after 1998, average annual generation shall be calculated based on a three-year average, or the anticipated average annual generation if operational less than 3 years. Documentation of average annual generation must accompany the fee.

The fee level for a consolidated application shall include the production fee for the total average annual generation included in the consolidated application based on the fee schedule above, plus a \$2,000 fee for each dam included within the application. (A consolidated application may be submitted by an Applicant that owns or operates multiple facilities in a watershed that are operationally or hydrologically connected.)

Application Fee Premium for “Pre-Operations” Certification of a “new” facility:

The fee level for an application for pre-operations certification of a “new” facility (see Part IV, Section A.2) shall include a 10 percent fee premium calculated from the total fee charged. For example, if a single Facility produces 7 “average annual megawatts” as described above, including the addition of new capacity not yet operational, then the total application fee would be \$5,500 (the \$5,000 regular fee plus the ten percent premium). If a consolidated application of 2 Facilities produces 7 “average annual megawatts” including the addition of the new capacity not yet operational, then the total application fee would be \$7,700 (the \$5,000 base fee, plus \$2,000 for each dam in the consolidated application for a subtotal of \$7,000, plus the 10 percent premium for pre-operations certification).

Reductions in the application fee may be available under certain circumstances. Please contact the Institute for details.

The level of fee for application for re-certification will be developed by the Governing Board and will differ from the fee for initial application. The Governing Board will periodically review the level of both the Application Fee and Re-Certification Application Fee.