

## MEMORANDUM

**To:** LIHI Governing Board and Advisory Committee  
**From:** Gabriela Goldfarb, *Gabriela Goldfarb Consulting*  
**Date:** April 29, 2009  
**Re:** Brief Summary of Changes to Criteria

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This memorandum highlights the most significant differences between LIHI's existing criteria, as reflected in the current questionnaire, and the "revised criteria," as reflected in the new application for certification proposed by the LIHI Criteria Task Force. I have also prepared, and can make available upon request, two other documents. One shows in "track changes" the proposed revisions to LIHI's definitions. The other is a lengthy document (nearly 40 pages) that presents a side-by-side comparison of the LIHI questionnaire ("existing criteria") and the most recent draft of the proposed application for certification ("proposed criteria"), as well as the observations below. If you would like me to email you a copy of these supplemental materials please contact me at [gabriela@goldfarbconsulting.com](mailto:gabriela@goldfarbconsulting.com).

### **Global Changes**

Two global changes are worth noting. First, "Line-by-Line Instructions" for completing the existing LIHI questionnaire, currently provided in a separate LIHI program document, have been integrated into the body of the new criteria, and presented in the form of a "Goal" and "Standard" for satisfying a given requirement. Second, the proposed criteria rely on January 1, 1990 as the key date representing the effective date of implementation of the Electric Consumers Protection Act Of 1986, instead of the existing criteria's reliance on the law's enactment date of December 31, 1986,

### **Background Information**

The new Background Information section:

- Asks more detailed information about a facility's regulatory status and compliance with post-licensing requirements.
- Requests information about other facilities in the watershed, both associated and (in streamlined form) not associated with the applicant.
- Shifts questions related to incremental hydropower, removal recommendations, and post-licensing proceedings to a proposed new criterion, "A. General Eligibility" (see below).

### **General Eligibility**

Many elements of this new criterion were drawn from the existing questionnaire. It screens for an applicant's and facility's basic eligibility regarding: a) type and age of facility and regulatory status; b) type and impacts of incremental hydro; c) removal recommendation.

### **Settlement Agreement**

This is a completely new criterion that seeks to empower LIHI to assess the quality of a settlement agreement and whether an agreement qualifies as the most recent and stringent resource agency recommendation for LIHI certification purposes.

## **Flows**

The proposed flows criterion represents a significant restructuring compared to the existing flows criterion. The questions are calibrated to the degree the facility, and any other facilities in the drainage controlled by the applicant, impact natural flows. Facilities that do not alter natural flows pass quickly, while those that do significantly alter flows at the facility or through control of upstream or downstream facilities, and/or due to a bypass reach, must demonstrate compliance with resource agency flow release requirements issued after January 1, 1990, or – for now – a demonstration that flows meet Aquatic Base Flow standards or “good” habitat flow standards calculated using the Montana-Tennant method. The proposed section alerts applicants that LIHI plans to replace the ABF/Montana-Tennant methods with a proposed quantitative method that is based on a natural flow paradigm, and that LIHI intends to launch in 2009 a process to develop this new method of satisfying the flows criterion.

## **Water Quality**

The new water quality criterion maintains the general approach of the existing criterion in relying on compliance with a state-issued Clean Water Act Section 401 water quality certification or a demonstration of compliance with the state’s quantitative water quality standards. However, the proposed criterion shifts one key date and adds another. Applicants meeting the criteria via compliance with a water quality certificate can do so only if the certificate was issued after January 1, 1990 (instead of December 31, 1986 as the existing criteria allow). Facilities licensed before January 1, 2010 – the date after which the proposed new LIHI criteria are expected to be in effect, and projects in the LIHI certification “pipeline” already processed – have the alternative of demonstrating compliance with the state’s quantitative water quality standards. Facilities licensed in 2010 or later must have a water quality certificate or demonstrate compliance with water quality requirements of a settlement agreement (i.e., they no longer have the route of demonstrating compliance with state quantitative standards). The proposed criterion maintains the requirement to demonstrate that the facility does not impair water quality in the vicinity of the project.

## **Reservoir Levels**

This is a completely new criterion; the existing questionnaire does not contain reservoir management-specific questions.

## **Fish Passage and Fish Protection**

The proposed section shifts the emphasis from the original’s focus on “anadromous and catadromous” fish to comprehensively address “migratory fish,” which encompass anadromous, catadromous, potadromous, and riverine fish in a newly added definition (see separate Definitions comparison document). As elsewhere, January 1, 1990 replaces December 31, 1986 as the key dividing line for resource agency recommendations. In regards to fish passage, the proposed section introduces a new path to pass the criterion by documenting 100% upstream and downstream fish passage survival rates for migratory fish “using a generally accepted monitoring methodology.” Otherwise, the criterion maintains the existing means of satisfying the criterion: compliance with a resource agency passage recommendation or obtaining a resource agency letter confirming that the facility’s upstream and downstream fish passage measures (if any) are appropriately protective of the fishery resource. The proposed section maintains the original’s investigation of circumstances in which resource agencies had the opportunity but declined to

issue passage requirements, as well as questions about adequately protecting fish from entrainment and other project impacts.

### **Watershed Protection**

There are no significant changes to this section.

### **Threatened And Endangered Species Protection**

The proposed criterion remains essentially unchanged from the existing criterion. The only change is the elimination of a requirement relating to circumstances in which there is a biological opinion applicable to the facility. Under the existing criterion, applicants in such circumstances have to demonstrate that a “recovery plan under active development will have no material effect on the Facility’s operations.”

### **Energy Efficiency**

This is a completely new criterion.

### **Cultural Resource Protection**

There are no material changes to this criterion.

### **Recreation**

This criterion has been expanded in three ways:

- **Data:** adds a new question asking about the applicant’s provision of “relevant, readily accessible, and up-to-date information on reservoir levels and river flows.”
- **Access:** revises the access related question to require access to recreation unless a government agency has prohibited such access in all or part of the publicly owned water, and defines access more broadly, rather than simply asking about compliance with FERC license or resource agency recommendations related to access.
- **Mitigation:** adds a new question asking whether the facility adequately mitigates for or enhances relevant reservoir and/or downstream facility-affected recreational resources (e.g. by maintaining reservoir levels for summer recreational use, scheduled whitewater releases, providing tailrace fishing access, etc.).

### **Removal Recommendation**

The proposed questionnaire shifts the question about whether a facility has been recommended for removal from a separate stand alone criterion to the new A. General Eligibility criterion (at A.3.).