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October 24, 2011

Mr. Fred Ayer, Executive Director
Low Impact Hydropower Institute
34 Providence St.
Portland, ME 04103

RE: Application Reviewer Report for the
Gardners Falls Project

Dear Fred:

Attached please find my reviewer's report regarding the application by the North American Energy Alliance, LLC for certification of the Gardners Falls Project by the Low Impact Hydropower Institute (LIHI).

Sincerely,

//s//

Ronald Kreisman

Attachment

REVIEW OF APPLICATION FOR CERTIFICATION BY THE LOW IMPACT HYDROPOWER INSTITUTE OF THE GARDNERS FALLS PROJECT

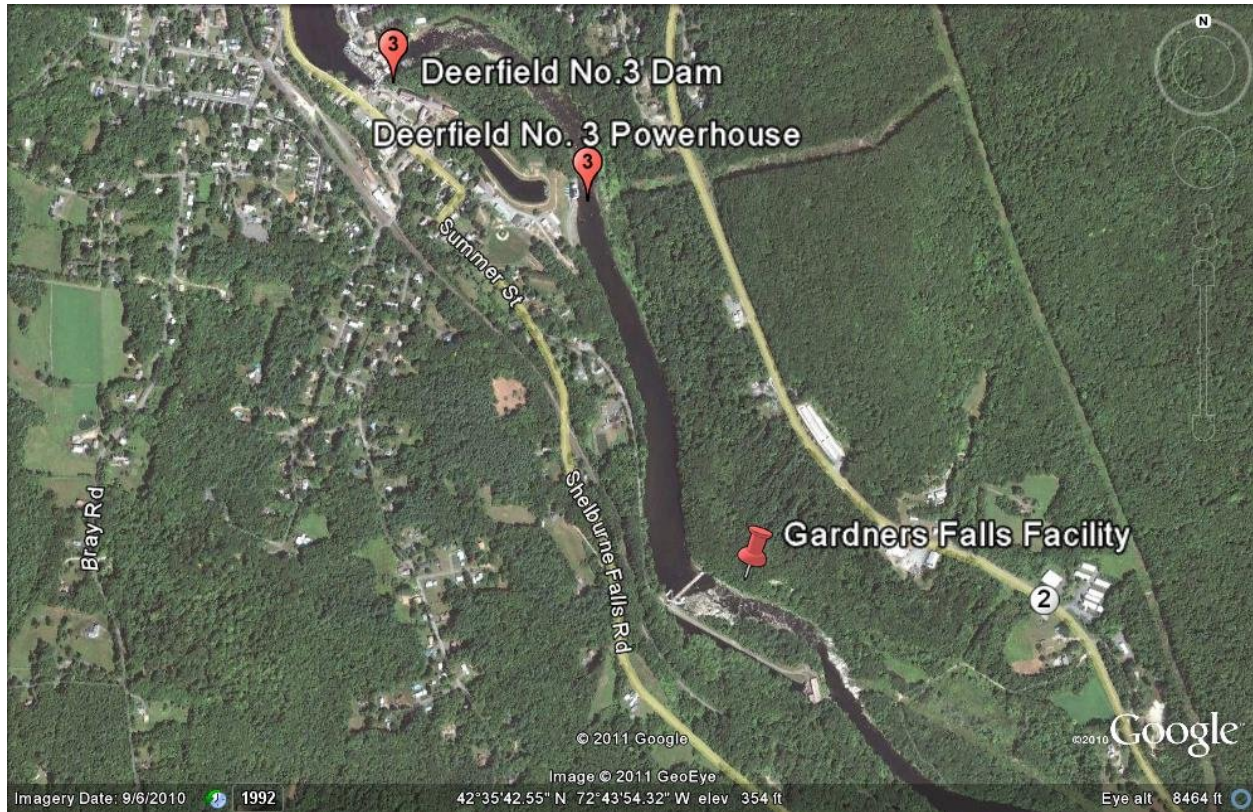
Prepared by:
Ronald Kreisman
October 2011

This report reviews the application submitted by North America Energy Alliance, LLC (Applicant) to the Low Impact Hydropower Institute (LIHI) for certification of its Gardners Falls Hydroelectric Project (Gardners Falls or Facility) on the Deerfield River in Massachusetts.

I. PROJECT'S GEOGRAPHIC LOCATION

The Facility is located in northwestern Massachusetts in the towns of Buckland and Shelburne on the Deerfield River, approximately sixteen miles upstream of the confluence of the Deerfield River with the Connecticut River. The Deerfield River is a major tributary of the Connecticut River, flowing generally southeast across northwestern Massachusetts and southern Vermont from its headwaters in Vermont, and joining the Connecticut in Greenfield, Massachusetts.

Gardners Falls is one of ten dams (one storage and nine hydropower) operating on a 65-mile stretch of the Deerfield. Downstream of Gardners Falls is one of the eight other hydroelectric dams on the Deerfield -- the Deerfield Dam No.2 hydroelectric facility, approximately 1.5 miles downstream. Upstream of Gardners Falls are the other eight dams (seven hydroelectric facilities and one storage dam), starting with the Deerfield Dam No. 3, located less than one mile upstream (as shown in the photograph below), then followed by the Deerfield Dam No. 4 approximately one mile further upstream. Further upstream are five other hydroelectric dams and finally the storage dam. Of the nine non-applicant owned dams, eight are owned by TransCanada Hydro Northeast, and one is owned by Brookfield.



II. PROJECT AND IMMEDIATE SITE CHARACTERISTICS

The Facility is currently owned by North American Energy Alliance, LLC and was originally constructed in 1904. The original project included two hydro-electric turbines. The powerhouse was expanded in 1914 with the installation of two more turbines, followed by a final expansion in 1924 with the addition of a fifth turbine. Currently, the Project is semi-automated and contains four active units, with a total installed capacity of 3.58 MW. One of the original turbines was retired in 1971; its penstock was plugged and filled in when the unit was removed from service.

As shown in the photograph below, the major project works consist of a dam and impoundment, a power canal, an intake structure and a powerhouse downstream of the spillway. Specifically, the Project consists of: (1) a concrete gravity dam, 337 feet long with a maximum height of 30 feet at permanent crest elevation 332.79 feet mean sea level (msl) and flashboard elevation 334.79 feet msl, (2) an impoundment 3,200 feet long, with a surface area of 21 acres, 190 acre-feet gross storage and 37.2 acre-feet usable storage, (3) a brick and concrete powerhouse equipped with the four turbine-generator units, (4) a 1,300-foot power canal 31 feet wide and 15 feet deep, and (5) a double circuit 13.8 KV transmission line connecting the Gardners Falls project to the Montague substation.



The impoundment upstream of the Facility is small, consisting of 190 acre-feet of gross storage, 37.2 acre-feet of useable storage, and 21 acres of surface area.



Flows into the Facility are governed by flow releases from TransCanada’s upstream projects, several of which are operated as peaking projects, and over which the Facility has no control. The Facility is operated in a limited pond-and-release mode, utilizing the small storage capacity (37.2 acre-feet) afforded by a maximum 1.8-foot drawdown to accommodate the flows caused by the upstream peaking operations. The operating mode of the Gardner Falls project does not change during dry, mean or high water years. As flows vary at the Project, the number of turbines operating and the duration of operation changes, increasing and decreasing the amount of annual generation realized.

III. REGULATORY AND COMPLIANCE STATUS

The Gardners Falls project (No. 2234) was granted a new, 40-year license by the Federal Energy Regulatory Commission (“FERC”) in April 1997. The original license granted July 1964. The other nine Deerfield projects (FERC Nos. 2323 and 2669) were also issued new, 40-year licenses at the same time, incorporating terms of a multi-party settlement agreement executed in 1994 which did not include the Facility.

Based on a review of filings made for this project at FERC (P-2334) from 2001 - 2011, I found no record of license compliance issues or complaints, whether from the last on-site FERC inspection (conducted in 2004) or in filings from federal or state resource agencies or other entities or individuals.

As part of the review work, in contacting resource agencies the USFWS raised a possible compliance issue regarding the Facility's downstream passage operations. (See Record of Contacts, John Warner.) The USFWS was unaware of whether the problem it identified was one-time or ongoing. No other problems have been reported, and the USFWS took no follow-up action with the applicant. The applicant states that it maintains its facility as required by the license and was not made aware of the situation cited by USFWS.

IV. PUBLIC COMMENT RECEIVED BY LIHI

During the public comment period, LIHI received comments from State of Massachusetts agencies and from two NGO watershed protection agencies. These comments are reproduced in the Record of Contacts at the end of this report.

As stated in the comments, both the Massachusetts Department of Environmental Protection and the Massachusetts Division of Fisheries and Wildlife, as well as the Connecticut River Watershed Council and the Deerfield River Watershed Association, opposed LIHI certifying the Facility as low impact. While acknowledging that the Facility does not operate in isolation, they contend that the Facility is part of a series of dams on the Deerfield River that cause, or are part of a system that has caused highly detrimental impacts to aquatic life throughout the river system, due to peaking flows, the absence of fish passage and significant loss of aquatic habitat from the many blockages and impoundments on the river. As such, they do not believe this Facility can be called low impact.

The applicant filed two sets of comments that responded to these arguments, also reproduced in the Record of Contacts at the end of this report. Summarized, the applicant contends that whatever the commenters argue, the fact remains that (1) the applicant has satisfied all of LIHI's criteria, and (2) the applicant is not responsible for the issues raised by the commenters, and LIHI has never denied certification to a facility when that facility does not have the authority or control necessary to remedy the concerns being raised.

V. SUMMARY OF COMPLIANCE WITH CRITERIA AND ISSUES IDENTIFIED

Below is a summary of my findings regarding compliance with each of LIHI's criterion:

- **Criterion A, Flows** -- Although significant concern has been stated by state agencies (Mass. DEP and Division of Fisheries and Wildlife) and the two NGO watershed organizations that commented on the flows situation at the Facility and the adverse effects from peaking power to the macroinvertebrate and fish populations of the Deerfield in general and specifically in the area of the Facility, the Facility is nonetheless in compliance with resource agency recommendations issued in 1994 -- the outcome used by LIHI's Flow criterion for "passing" this criterion. No commenters have claimed that the applicant is not in compliance. In addition and although not required to achieve approval under LIHI's Flows criterion, the applicant has also demonstrated that its operations of the Facility do not exacerbate or add to any environmental problems that may be caused by flow management regimes at upstream facilities.

- **Criterion B, Water Quality** -- Although the Mass. DEP expresses significant concerns with the “hydromodifications” occurring on the Deerfield River and at the project, and recommends against low impact certification, Mass DEP acknowledges that (1) the Facility is in compliance with all conditions of the water quality certification issued in December 1994 and (2) that State of Massachusetts water quality standards are being met. Thus, under LIHI’s water quality criterion, the Facility achieves the outcome used by LIHI’s Water Quality criterion for “passing” this criterion.
- **Criterion C, Fish Passage and Protection:** The USFWS prescribed downstream passage for anadromous species at the Facility in 1994. All requirements of the prescription have been achieved. There is no upstream passage at the facility for anadromous species due to the absence of upstream passage at the next downstream dam. There is no prescription for passage for catadromous species (American eel), but the USFWS does not believe upstream or downstream passage for American eel is currently warranted, based upon the absence of upstream and downstream passage for American eel at any of the hydropower projects and the storage project on the Deerfield River, and in particular at the downstream Deerfield No. 2 dam. The USFWS is unaware as to whether American eel are found in the area of the Facility.
- **Criterion D, Watershed Protection** -- There is no buffer zone, shoreland protection fund, or shoreline management plan in place for or at this Facility. Thus, all requirements that exist (none) are being met, and no three-year additional term for certification is warranted.
- **Criterion E, Threatened and Endangered Species Protection** -- No threatened or endangered species listed under state or federal Endangered Species Acts are present in the Facility area and/or downstream reach.
- **Criterion F, Cultural Resources** -- The applicant is, and consistently has been, in compliance with all requirements in its FERC license regarding cultural resource protection, mitigation or enhancement, which is the outcome required for “passing” this criterion.
- **Criterion G, Recreation** -- The applicant is, and consistently has been, in compliance with all requirements in its FERC license regarding recreation and access. The Connecticut River Watershed Council raised concerns over signage and road access conditions at the Wilcox Hollow recreation area adjoining the project area. The applicant has demonstrated that it is not legally responsible for maintenance of the access road, but that, per agreement with the Mass. Department of Conservation and Recreation, the State of Massachusetts has agreed to be responsible for these issues. Contact with the State confirms this, and that the State has no issues with the applicant’s activities regarding Wilcox Hollow, including the signage.
- **Criterion H, Facilities Recommended for Removal** -- There is no resource agency recommendation for removal of the dam associated with the Facility.

VI. GENERAL CONCLUSIONS AND REVIEWER RECOMMENDATION

Based on my review of information submitted by the applicant both as part of the application and in response to subsequent inquiries, the comments on the application submitted in writing or provided orally to LIHI, and my own independent review, I conclude that the Facility is in compliance with LIHI's criteria, as summarized in Section V, above and further explained in Section VII below.

I therefore recommend that the Facility should be certified to be in compliance with LIHI's criteria with a certification term of five years.

VII. DETAILED CRITERIA REVIEW

A. FLOWS

Goal: 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.

Standard: For instream flows, a certified facility must comply with recent resource agency recommendations for flows. If there were no qualifying resource agency recommendations, the applicant can meet one of two alternative standards: (1) meet the flow levels required using the Aquatic Base Flow methodology or the "good" habitat flow level under the Montana-Tennant methodology; or (2) present a letter from a resource agency prepared for the application confirming the flows at the facility are adequately protective of fish, wildlife, and water quality.

Criterion:

- 1) Is the facility in Compliance with Resource Agency Recommendations issued after December 31, 1986 regarding flow conditions for fish and wildlife protection, mitigation and enhancement (including in-stream flows, ramping and peaking conditions, and seasonal and episodic instream flow variations) for both the reach below the tailrace and all bypassed reaches?**

YES -- The Facility is in compliance with flow condition recommendations issued by the resource agencies in 1994. No commenters have claimed that the applicant is not in compliance.

PASS, GO TO B

PASS

B. WATER QUALITY

Goal: The Water Quality Criterion is designed to ensure that water quality in the river is protected.

Standard: 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).

Criterion:

1) Is the Facility either:

- a) In compliance with all conditions issued pursuant to a Clean Water Act Section 401 water quality certification issued for the facility after December 31, 1986? Or**
- b) In Compliance with the quantitative water quality standards established by the state that support designated uses pursuant to the federal Clean Water Act in the Facility area and in the downstream reach?**

YES -- Mass. DEP states that the Facility is in compliance with all conditions of the water quality certification issued in December 1994.

GO TO B2

- 2) Is the Facility area or the downstream reach currently identified by the state as not meeting water quality standards (including narrative and numeric criteria and designated uses) pursuant to Section 303(d) of the Clean Water Act?**

NO -- Mass DEP states that water quality standards are being met.

PASS, GO TO C

PASS

C. FISH PASSAGE AND PROTECTION

Goal: 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.

Standard: 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 or catadromous fish, and the fish are still present in the area, the facility must demonstrate either that there was a recent decision that fish passage is not necessary for a valid environmental reason, that existing fish passage survival rates at the facility are greater than 95% over 80% of the run, or provide a letter prepared for the application from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service confirming the existing passage is appropriately protective.

Criterion:

1) Is the facility in compliance with Mandatory Fish Passage Prescriptions for upstream and downstream passage of anadromous and catadromous fish issued by Resource Agencies after December 31, 1986?

FOR ANADROMOUS FISH -- YES. Per October 1994 prescription by the USFWS, there is a prescription for downstream anadromous fish passage which has been constructed (after the design proposed by the then--owner was modified based on agency comments) and for which the required effectiveness testing was performed in 2000. Based on “poor” downstream passage effectiveness results at high flows (according to USFWS), FERC ordered modifications to downstream passage, which were made. No further effectiveness testing was ordered, or has been requested by the USFWS. No upstream anadromous fish passage has been prescribed. *GO TO C5*

FOR CATADROMOUS FISH -- NOT APPLICABLE. No prescription was issued; authority was reserved per October 1994 Section 18 filing with FERC. *GO TO C2*

2) Are there historic records of anadromous and/or catadromous fish movement through the facility area, but anadromous and/or catadromous fish do not presently move through the Facility area (e.g., because passage is blocked at a downstream dam or the fish run is extinct)?

YES, go to C2a

- a) If the fish are extinct or extirpated from the Facility area or downstream reach, has the Applicant demonstrated that the extinction or extirpation was not due in whole or part to the Facility?**

NOT APPLICABLE, Go to C2b

- b) If a Resource Agency Recommended adoption of upstream and/or downstream fish passage measures at a specific future date, or when a triggering event occurs (such as completion of passage through a downstream obstruction or the completion of a specified process), has the Facility owner/operator made a legally enforceable commitment to provide such passage?**

NOT APPLICABLE, Go to C3

3) If, since December 31, 1986:

- a) Resource Agencies have had the opportunity to issue, and considered issuing, a Mandatory Fish Passage Prescription for upstream and/or downstream passage of anadromous or catadromous fish (including delayed installation as described in C2a above), and**
- b) The Resource Agencies declined to issue a Mandatory Fish Passage Prescription,**
- c) Was a reason for the Resource Agencies' declining to issue a Mandatory Fish Passage Prescription one of the following: (1) the technological infeasibility of passage, (2) the absence of habitat upstream of the Facility due at least in part to inundation by the Facility impoundment, or (3) the anadromous or catadromous fish are no longer present in the Facility area and/or downstream reach due in whole or part to the presence of the Facility?**

NOT APPLICABLE, Go to C4

4) If C3 was not applicable:

- a) Are upstream and downstream fish passage survival rates for anadromous and catadromous fish at the dam each documented at greater than 95% over 80% of the run using a generally accepted monitoring methodology? Or**
- b) If the Facility is unable to meet the fish passage standards in 4.a, has the Applicant either i) demonstrated, and obtained a letter from the U.S. Fish and Wildlife Service or National Marine Fisheries Service confirming that demonstration, that the upstream and downstream fish passage measures (if any) at the Facility are appropriately protective of the fishery resource, or ii) committed to the provision of fish passage measures in the future and obtained a letter from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service indicating that passage measures are not currently warranted?**

YES to 4) b) -- The USFWS has stated that passage measures for American eel are not currently warranted at the Facility due to absence of information on presence of eel and the lack of eel passage at Deerfield No. 2 downstream. *GO TO C5*

5) Is the Facility in Compliance with Mandatory Fish Passage Prescriptions for upstream or downstream passage of riverine fish?

YES, GO TO C6

6) Is the facility in Compliance with Resource Agency Recommendations for Riverine, anadromous and catadromous fish entrainment protection, such as tailrace barriers?

YES PASS, GO TO D

PASS

D. WATERSHED PROTECTION

Goal: The Watershed Protection criterion is designed to ensure that sufficient action has been taken to protect, mitigate and enhance environmental conditions in the watershed.

Standard: A certified facility must be in compliance with resource agency and Federal Energy Regulatory Commission (“FERC”) recommendations regarding watershed protection, mitigation or enhancement. In addition, the criterion rewards projects with an extra three years of certification that have a buffer zone extending 200 feet from the high water mark or an approved watershed enhancement fund that could achieve within the project’s watershed the ecological and recreational equivalent to the buffer zone and has the agreement of appropriate stakeholders and state and federal resource agencies. A Facility can pass this criterion, but not receive extra years of certification, if it is in compliance with both state and federal resource agencies recommendations in a license-approved shoreland management plan regarding protection, mitigation or enhancement of shorelands surrounding the project.

Criterion:

1) Is there a buffer zone dedicated for conservation purposes (to protect fish and wildlife habitat, water quality, aesthetics and/or low-impact recreation) extending 200 feet from the average annual high water line for at least 50% of the shoreline, including all of the undeveloped shoreline?

NO, GO TO D2

2) Has the facility owner/operator established an approved watershed enhancement fund that: 1) could achieve within the project’s watershed the ecological and recreational equivalent of land protection in D.1), and 2) has the agreement of appropriate stakeholders and state and federal resource agencies?

NO, GO TO D3

3) Has the facility owner/operator established through a settlement agreement with appropriate stakeholders, with state and federal resource agencies’ agreement, an appropriate shoreland buffer or equivalent watershed land protection plan for conservation purposes (to protect fish and wildlife habitat, water quality, aesthetics and/or low impact recreation)

NO, GO TO D4

4) Is the facility in compliance with both state and federal resource agencies recommendations in a license approved shoreland management plan regarding protection, mitigation or enhancement of shorelands surrounding the project.

YES -- There are no resource agency recommendations and there is no shoreland management plan regarding shorelands surrounding the project.

PASS, GO TO E

PASS

E. THREATENED AND ENDANGERED SPECIES PROTECTION

Goal: 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.

Standard: 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.

Criterion:

1) Are threatened or endangered species listed under state or federal Endangered Species Acts present in the Facility area and/or downstream reach?

NO, PASS, GO TO F

PASS

F. CULTURAL RESOURCE PROTECTION

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

Standard: 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.

Criterion:

1) If FERC-regulated, is the Facility in compliance with all requirements regarding Cultural Resource protection, mitigation or enhancement included in the FERC license or exemption?

YES -- the applicant is, and consistently has been, in compliance with all requirements in its FERC license regarding cultural resource protection, mitigation or enhancement.

PASS, GO TO G

PASS

G. RECREATION

Goal: The Recreation Criterion is designed to ensure that the facility provides access to the water without fee or charge, and accommodates recreational activities on the public's river.

Standard. 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 the public access to water without fee or charge.

Criterion:

1) If FERC-regulated, is the Facility in Compliance with the recreational access, accommodation (including recreational flow releases) and facilities conditions in its FERC license or exemption?

YES -- the applicant is, and consistently has been, in compliance with all requirements in its FERC license regarding. Contact with the State (see below, under Contacts) confirms this, and that the State has no issues with the applicant's activities regarding Wilcox Hollow, including the signage.

GO TO G3

3) Does the Facility allow access to the reservoir and downstream reaches without fees or charges?

YES, PASS, GO TO H

PASS

H. FACILITIES RECOMMENDED FOR REMOVAL

Goal: 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.

Standard: If a resource agency has recommended removal of a dam associated with the facility, the facility will not be certified.

Criterion:

1) Is there a Resource Agency recommendation for removal of the dam associated with the Facility?

NO -- PASS, FACILITY IS LOW IMPACT

PASS

**FACILITY MEETS
THE LIHI CRITERIA FOR CERTIFICATION**

INDEX OF CONTACT INFORMATION FOR LIHI CRITERIA

LIHI CRITERION	PRIMARY CONTACT INFORMATION
Flows	<ul style="list-style-type: none"> • Andrea Donlon, Connecticut River Watershed Council • Robert May, Deerfield River Watershed Association • Robert Kubit, Mass. DEP • Caleb Slater, Mass. Division of Fisheries and Wildlife
Water Quality	<ul style="list-style-type: none"> • Robert Kubit, Mass. DEP
Fish Passage & Protection	<ul style="list-style-type: none"> • Caleb Slater, Mass. Division of Fisheries and Wildlife • John Warner, USFWS
Watershed Protection	
Threatened & Endangered Species	<ul style="list-style-type: none"> • Caleb Slater, Mass. Division of Fisheries and Wildlife • John Warner, USFWS
Cultural Resources Protection	<ul style="list-style-type: none"> • Edward Bell, senior archaeologist, Massachusetts Historical Commission
Recreation	<ul style="list-style-type: none"> • David Miller, Massachusetts Dept. of Conservation and Recreation
Facilities Recommended for Removal	

RECORD OF CONTACTS

NOTE: The information presented below was gathered from contacts by email, telephone, and/or written public comments to LIHI. Telephone interviews were conducted either when the reviewer determined a response received by email or public comment was not available, insufficient, or when a contact preferred a telephone conversation.

Date: April 19, 2011
Contact Person: Robert Kubit, P.E.
Water Quality Engineer
Massachusetts Department of Environment
Protection
Contact Information: 508-767-2854
Area of Expertise: Flows, Water Quality

By letter to LIHI dated April 19, 2011, Mr. Kubit stated that “The Department acknowledges the Gardners Falls Project has met FERC license and state Water Quality Certification requirements since they were issued. We believe however, that the Gardners Falls Project does not qualify as a Low Impact Hydroelectric Facility.”

“According to the Mass DEP Deerfield River Watershed 2000 Water Quality Assessment Report (WQAR), in Massachusetts there are eight licensed hydroelectric stations [on the Deerfield River] that effectively control the flow of the river. The WQAR *Aquatic Life Use* in segment MA33-03 is assessed as support based on the good survival of test organisms and water quality data. This use, however, is identified with an Alert Status because of concerns regarding hydromodification resulting from the peaking operations of the hydroelectric stations. Since the Gardners Falls Project operates in a peaking mode, we believe the Gardners Falls Project contributes to hydromodification impacts to the Deerfield River.”

Date: April 5, 2011
Contact Person: Caleb Slater, Ph.D., Anadromous Fish Project
Leader, Massachusetts Division of Fisheries and
Wildlife
Contact Information: 508-389-6331
Area of Expertise: Flows, Fish Passage, ETS

By letter dated April 5, 2011, Dr. Slater offered his comments to LIHI. The text of the letter is provided below.



MassWildlife

Commonwealth of Massachusetts

Division of Fisheries & Wildlife

Wayne F. MacCallum, *Director*

April 5, 2011

Mr. Fred Ayer, Executive Director
Low Impact Hydropower Institute
34 Providence Street
Portland, ME
04103

RE: The Gardners Falls Hydroelectric Project
FERC No. P-2234

Dear Mr. Ayer:

The Department of Fish and Game ("DFG") hereby submits the following comments on the Low Impact Hydropower Institute's ("LIHI") Pending Application for the proposed LIHI certification of North American Energy Alliance, LLC's ("NAEA") Gardners Falls

Hydroelectric project, located on the Deerfield River, in the Towns of Buckland and Shelburne, in Franklin County Massachusetts.

DFG is submitting these comments to LIHI in order to fulfill the requirements of the Massachusetts Department of Energy Resources (“DOER”) Renewable Energy Portfolio Standard Regulations (225 CMR 14.00; “RPS I” and 225 CMR 15.00; “RPS II”). The RPS I and RPS II regulations were promulgated by DOER on January 1, 2009 and require that any hydroelectric project wishing to qualify as either a RPS I or RPS II generator first obtain LIHI certification. These regulations also require all relevant regulatory agencies to comment on the pending LIHI application.

The Department does not support NAEA’s application for LIHI Certification of the Gardners Falls Hydroelectric Project for the reasons outlined below.

PROJECT

Project consists of: (1) a concrete gravity dam, 337 feet long with a maximum height of 30 feet at permanent crest elevation 332.79 feet mean sea level (msl) and flashboard elevation 334.79 feet msl, (2) an impoundment 3,200 feet long, with a surface area of 21 acres, 190 acre-feet gross storage and 37.2 acre-feet usable storage, (3) a brick and concrete powerhouse equipped with four turbine-generator units with total capacity 3.58 MW, (4) a 1,300-foot power canal 31 feet wide and 15 feet deep, and (5) a double circuit 13.8 KV transmission line connecting the Gardner Falls project to the Montague substation.

The Gardners Falls project is situated among nine other hydroelectric facilities located on the Deerfield River. All of the other nine facilities are owned and operated by an affiliate of TransCanada Corporation, and eight are licensed as one project (“Deerfield River Project,” FERC No. 2323). The Deerfield River Project consists of one storage facility (Somerset Development) and seven hydroelectric facilities (Searsburg, Harriman, and Sherman Developments, and the Deerfield No. 5, No. 4, No. 3 and No. 2 Developments). A pumped-storage project (Bear Swamp Project), owned by Bear Swamp Power Company, LLC and operated by Brookfield Renewable Power, is licensed by the FERC as Project No. 2669 and is located below the Deerfield No. 5 development. The Deerfield River Project (FERC No. 2323) also underwent FERC relicensing at the same time as the Gardners Falls project.

FISH AND WILDLIFE RESOURCES

The Deerfield River System in MA includes over 100 recognized Cold Water Fishery Resource waters including many of the Deerfield’s major tributaries such as the North,

South, Cold, Bear, and Chickley Rivers. The Deerfield River supports a diverse fish community of both resident and migratory fish. The Deerfield River has been stocked with juvenile Atlantic salmon for 23 years (600,000 per year at current rates) as part of the multistate Connecticut River Atlantic Salmon Restoration Program.

In Massachusetts, the entire Deerfield River corridor has been identified as “priority habitat” for rare species under the Massachusetts Endangered Species Act (MESA).

IMPACTS AND MITIGATION

FLOWS

Run-of-river Operation

NAEA states that the Gardners Falls project is operated in a “limited pond-and-release mode”, utilizing the small storage capacity (37.2 acre-feet) afforded by a maximum 1.8–foot pond drawdown to accommodate the flows caused by the upstream peaking operations.

Flows into the Gardners Falls project, which is located between Deerfield Developments 3 and 2, are dependent upon flow releases from TransCanada’s upstream projects which operate in a daily peaking mode.

Bypass reach

The project’s FERC license guarantees a minimum flow of 150 cfs or inflow (Guaranteed 100cfs from upstream projects) is released into the project’s 1,300 foot long bypass reach.

FISH PASSAGE

The Gardners Falls project operates downstream fish passage facilities for Atlantic salmon smolts.

COMMENTS

The Department does not support NAEA’s application for LIHI Certification of the Gardners Falls Project. This project, with its daily peaking operations contributes to dramatic changes to the nature of the Deerfield River and can not be described as “Low Impact”. While it is true that much of the flow alteration is caused by upstream projects not owned or operated by NAEA, the department believes that until such time as these other projects are operated in a significantly more environmentally sensitive manner, neither Gardner Falls nor any other hydro project on the Deerfield River is deserving of LIHI certification.

Thank you for this opportunity to comment.

Sincerely,



Caleb Slater, Ph.D.
Anadromous Fish Project Leader

Date: September 15, 2011
Contact Person: John P. Warner, Assistant Supervisor, Conservation Planning Assistance and Endangered Species, New England Field Office, U.S. Fish and Wildlife Service
Contact Information: (603) 223-2541 - ext.15
Area of Expertise: Fish passage, ETS

I had two contacts with John Warner on September 15, 2011 regarding the Gardners Falls facility. In the first, he sent me the following email:

Hi Ron -- As I promised, here is a brief report on Garners Falls DS passage from May 2011 -- This was only a snapshot in time so not sure the reason or duration when the facilities not being installed an operating properly. -- jw

John P. Warner
Assistant Supervisor, Conservation Planning Assistance and Endangered Species
New England Field Office, U.S. Fish and Wildlife Service
70 Commercial Street, Suite 300
Concord, NH 03301
(603) 223-2541 - ext.15
(603) 223-0104 - FAX

www.fws.gov.northeast/newenglandfieldoffice
----- Forwarded by John Warner/R5/FWS/DOI on 09/15/2011 08:19 AM -----

John
Project was not operating on my site visit out there - May 24, 2011. It had very very marginal at best d/s passage as boards were down and improper depth of flow was passing thru the d/s passage gate into our plunge pool. You can see spill passing over the down/failed boards maybe 20" - I think we have 36" boards there - 3 - 12" ones. Racks were not in place other than at best

the one closest to the bypass and that wasn't even in place "well". Flows passing unobstructed into the drawdown power canal. Sampling of pics converted as file size of my pics is huge.

Dick Quinn
Administrative Manager, P. E.
Contractor to U. S. Fish & Wildlife Service
North Attleboro National Fish Hatchery
144 Bungay Road
North Attleboro, MA 02760
508 - 695 - 5002 x12
508 - 695 - 5098 (fax)

In my second contact with John on September 15th (telephone call), we discussed the following:

1. Regarding downstream and upstream passage for anadromous species:

-- On the report from Dick Quinn, John stated that the USFWS had not followed up with the applicant nor had any other site visit, so he was not aware of whether the downstream fish passage situation observed by Dick Quinn was a one-time situation or ongoing.

-- On effectiveness of downstream passage for the Atlantic salmon that were being stocked upstream, I also asked whether there had been any effectiveness testing since the last time it was done, in 2000. John stated that there had not been any.

-- On need for downstream passage for other anadromous species, John stated that only Atlantic salmon were being stocked upstream of Gardners Falls, and that because of the number of dams on the Deerfield, there was no longer enough suitable habitat for American shad in the river without having to pass numerous dams, which was not a viable strategy for restoring shad to the river, and therefore no interest in shad stocking.

-- On need for upstream passage at Gardners Falls for anadromous species, John said that there was no need, as there was no upstream passage whatsoever at the downstream Deerfield No. 2 dam right now because there were not sufficient Atlantic salmon in the river to justify risking harm to returning salmon that were passing through several dams to reach spawning habitat and then back downstream, so the strategy of the USFWS and state resource agency has been to continue to stock appropriate sections of the Deerfield with hatchery-raised salmon.

2. Regarding downstream and upstream passage for catadromous American eel, John stated that he was not aware of any survey for eel presence below the Gardners Falls dam (who might be getting upstream of the dam at Deerfield No. 2 notwithstanding the absence of eel passage there). He stated that there could be eel at Gardners Falls and upstream, but that the USFWS was "too busy" to investigate, therefore was not pressing for upstream or downstream eel passage there right now, and that if there was to be a focus on possible eel passage at Gardners Falls there should also be focus at Deerfield No. 2 dam.

Date: April 13, 2011
Contact Person: Edward Bell, senior archaeologist, Massachusetts Historical Commission
Contact Information: 617-727-8470
Area of Expertise: Cultural, historical protection

By letter to LIHI dated April 13, 2011, Mr. Bell stated that because “there is no construction, demolition, or other project modification, then the proposed certification would not be an action about which the MHC is required to review and comment to assist a Federal agency in its determinations of whether an action is an “undertaking” and if so, whether the undertaking has the potential to cause effects on historic properties...”

Date: March 12, 2011
Contact Person: David Miller, Acting Forest & Park Supervisor III, Mohawk Trail State Forest
Contact Information: Mohawk.Trail@state.ma.us
Area of Expertise: Recreation

By email dated March 12, 2011, the Massachusetts Department of Conservation and Recreation stated as follows:

From: Trail, Mohawk (DCR) <Mohawk.Trail@state.ma.us>

Subject: Gardner Falls Project LIHI Cert. Application

Date: March 12, 2011 3:21:45 PM EST

The Massachusetts Dept. of Conservation and Recreation maintains a facility known as Wilcox Hollow in the town of Shelburne, MA / Franklin County. The area lies within the Gardner Falls Project Boundary and is located directly across the Deerfield River from the Gardner Falls Project Hydroelectric Facility in the town of Buckland, MA.

Wilcox Hollow is a recreation area maintained by the Massachusetts DCR and is one of 10 satellite areas that is managed by the Mohawk Trail State Forest. It is strictly an unstaffed, unimproved, (no structures) day use area allowing access to the Deerfield River for fishing, canoeing, and hiking on the Mahican Mohawk Trail foot path that follows the Deerfield River to the town of Deerfield, MA.

I have reviewed the FERC Form 80 "Licensed Hydropower Development Recreation Report" and the "LIHI Questionnaire" pertaining to recreation applications for the Gardner Falls Project.

Currently DCR does not have any issues pertaining to recreational use with the Gardner Falls Project seeking certification by LIHI. Their provision of warning signage along the Wilcox Hollow access road

alerting the public to be aware of changing water levels has provided a needed communication for safe recreation activities while in the area.

David Miller
Acting Forest & Park Supervisor III
Mohawk Trail State Forest

PUBLIC COMMENTS BY NGOs

• **FROM THE CONNECTICUT RIVER WATERSHED COUNCIL:**



CONNECTICUT RIVER WATERSHED COUNCIL

The River Connects Us

15 Bank Row, Greenfield, MA 01301

April 18, 2011

Mr. Fred Ayer, Executive Director
Low Impact Hydropower Institute
34 Providence Street
Portland, ME 04103

Subject: Gardners Falls Hydroelectric Project FERC No. P-2234

Dear Mr. Ayer,

The Connecticut River Watershed Council (CRWC) submits the following comments on the Low Impact Hydropower Institute's (LIHI) Pending Application for the proposed LIHI certification for the Gardners Falls Project located in Franklin County, Massachusetts along the Deerfield River. CRWC is the principal nonprofit environmental advocate for protection, restoration, and sustainable use of the Connecticut River watershed. The Deerfield River is a major tributary of the Connecticut River, and therefore this project is of interest to us. We were not intervenors in the relicensing of this project that led to the 1994 Settlement Agreement of the Deerfield River system, but we have been intervenors in numerous other FERC hydroelectric filings.

CRWC does not support NAEA's application for LIHI Certification of the Gardners Project for the reasons outlined below.

Flow

CRWC agrees with the comments submitted by the Massachusetts Division of Fisheries and Wildlife that although much of the flow alteration on the Deerfield River is caused by upstream projects not owned or operated by NAEA, until such time as these other projects are operated in a significantly more environmentally sensitive manner, neither Gardner Falls nor any other hydro project on the Deerfield River is deserving of LIHI certification.

Migratory Fish

There is currently no upstream fish passage at any of the dams on the Deerfield River system. The trigger number of radio-tagged salmon downstream of the dams was met for two consecutive years by 2006, and CRWC is disappointed that this has not resulted in the requirement of upstream fish passage. Movement of resident species, such as brook trout, is also prevented by the presence of this dam. In addition, there is no passage or protection measures for migration of American eel, and this is typically required in most contemporary FERC licenses.

Recreational Access

Unless someone already knows that Wilcox Hollow is a public access area, nobody would ever guess when driving by on Route 2 that the area wasn't private property and perhaps a driveway with a sign attached to it. The access road is frequently washed out and difficult to drive down. The LIHI application indicates that NAEA is not responsible for maintaining parts of the gravel drive, but there is no point to having an access area if you can't get to it.

Summary

The LIHI website explains that, "The [LIHI certification] criteria standards are typically based on the most recent, and most stringent, mitigation measures recommended for the dam by expert state and federal resource agencies, even if those measures aren't a requirement for operating." This indicates to us that simply by fulfilling the requirements of a FERC settlement agreement, a project is not necessarily going to be considered "low impact." In this case, the Settlement Agreement is 16 years old, and occurred before deregulation of electricity in Massachusetts. The flow regime and other requirements are not the most recent or stringent mitigation requirements that could be required.

Thank you for an opportunity to comment on this project.

Sincerely,



Andrea F. Donlon, M.S.
River Steward

cc: Caleb Slater, MA DFW
Deerfield River Watershed Association
Trout Unlimited

• **FROM THE DEERFIELD RIVER WATERSHED ASSOCIATION:**

April 28, 2011

Comments on the Gardeners Falls Hydro Project Application for Low Impact Hydro Certification:

The Deerfield River Watershed Association is a broadly-based volunteer group dedicated to preserving, protecting and enhancing the natural resources of the Deerfield River watershed. We were signatories of the 1994 settlement agreement which formed the basis of the license for most of the dams on the Deerfield and we have continued to be involved in issues concerning the flow regime and its effects on both the biological health and the recreational possibilities of the river.

We have previously submitted comments on the applications of Transcanada for the Deerfield Project (since withdrawn) and of Brookfield Renewable Power for the Fife Brook pumped storage project. Please see those comments for more detail.

The Gardeners Falls application must be seen in the context of the flow regime of the other dams on the river. Since the Gardeners Falls dam is situated between the Transcanada number two and number three dams, and since Gardeners Falls does not have a large storage capacity, it must run a similar flow regime. Utilities were deregulated in Massachusetts in the late 90's and since then the flow regime has been one of daily peaking. This means is that the river can ramp up and down by a factor of ten or more, multiple times a day. These changes can come without notice and in response not to seasonal or natural variations but in response to rapidly changing demand in the regional energy market.

The Settlement Agreement did not envision this peaking regime and it is our belief that it has multiple negative effects on the river. The extremes of rise and fall mean that large areas of the river bottom repeatedly go from submerged to dry and back again. We have studied the macroinvertebrates in the main stem of the river and have found that the flow regime decreases both the diversity and the density of bug species that are considered part of a healthy river. The variations in flow also promote bank erosion and create a "bathtub ring." It is also likely that these flow variations interfere with fish spawning, and in spite of some provision for downstream fish passage, fish and other aquatic organisms are lost in passage through the turbines.

It is apparent that this flow regime has been very detrimental to the recreational fishery on the Deerfield. We have gone from what used to be the best trout fishery in Massachusetts, and one of the best in New England, to a river where unpredictable high water has made fishing very difficult. The Deerfield used to support several fly shops and up to a dozen guides who would regularly bring clients to the river. No longer. The only commercial guiding now consists of three hundred dollar per day raft trips.

Gardners Falls is part of a system that imposes a number of significant environmental impacts on the Deerfield River. It is our view that these impacts cannot be ameliorated without fundamental changes in current hydropeaking operations. Thus, since LIHI standards aim at certifying projects that have "avoided or reduced their environmental impacts," we do not see how Gardners Falls can qualify.

Robert May
For the Board of Directors
Deerfield River Watershed Association

RESPONSES TO PUBLIC COMMENTS FROM THE APPLICANT

NORTH AMERICAN ENERGY ALLIANCE, LLC
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P.O. Box 2371773
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w.shortiii@verizon.net

April 25, 2011

Via E-Mail Only

Low Impact Hydropower Institute
c/o Mr. Fred Ayer
Executive Director
34 Providence Street
Portland, Maine 04103

Re: Application of Gardners Falls Project for Certification by the Low Impact Hydropower Institute

Dear Mr. Ayer:

During the course of the public comment portion of the certification process of the Gardners Falls Project (the "Project"), the Low Impact Hydropower Institute ("LIHI") received five sets of comment letters,^[1] of which one each was from the Massachusetts Department of Fish and Game (the "MDFG"), dated April 5, 2011, Massachusetts Department of Environmental Protection ("MDEP"), dated April 19, 2011 and the Connecticut River Watershed Council ("CRWC"), April 18, 2011 (collectively, the "Opposing Parties"). Essentially, each of these letters asserted that the Project is not low impact hydroelectric generation since the Project "with its daily peaking operations contributes to dramatic changes to the nature of the Deerfield River." Accordingly, the Project "can not be described as "Low Impact"." Furthermore, each Opposing Party contends that "that until such time as these other [hydro] projects [on the Deerfield River] are operated in a significantly more environmentally sensitive manner, neither Gardner Falls nor any other hydro project on the Deerfield River is deserving of LIHI certification." The letter from CRWC also asserts that, since the Project has no upstream fish and eel passage as well as a diminutive road sign and poorly maintained dirt road to the state park adjacent to the project boundary, LIHI certification for these reasons should also be denied.

While NAEA can understand the desire by the Opposing Parties for a near-perfect environment to support a diverse community of both resident and migratory fish in the Deerfield River, the observations of the Opposing Parties are not accurate and their conclusions are not supported by the facts. NAEA believes that the Project is low impact within the criteria of LIHI. Its operations do not contribute to any "dramatic changes to the nature of the Deerfield River." At this time, upstream fish and eel passage at the Project makes no sense unless all downstream dams cooperate. The situation at Wilcox Hollow described by CRWC contradicts the written statement received from the Massachusetts Department of Conservation and Recreation ("MDCR") as well as inspections conducted by the FERC. Accordingly, LIHI certification should be granted.

The Opposing Parties all agree that the Facility is not the direct source of the perceived adverse impact on the flows of the Deerfield River.^[2] They profess that that entity is TransCanada, the operator of seven of the upstream dams to the Project. It is the daily peaking flows of the TransCanada and Brookfield (the operator of Fife Brook Project, the eighth dam on the Deerfield River) dams that are responsible for what, if any, dramatic change in the Deerfield River that occurs at Gardners Falls. While the Project is permitted by its FERC license to operate in a "limited pond-and-release mode", utilizing the small storage capacity (37.2 acre-feet) afforded by a maximum 1.8-foot pond drawdown to accommodate the flows caused by the upstream peaking operations, it does not do so. Rather, NAEA operates the Project with a maximum drawdown of only one (1) foot and not in a daily peaking manner. The small amount of useable storage, 37.2 acre-feet, does not permit daily peaking operation. Assuming that the minimum inflow is 100 cfs, this drawdown would only be capable of operating one

generating unit (out of the Project's four generating units) for one hour. Thus, the ability of the Gardners Falls dam to cause an "adverse impact on the flows of the Deerfield River" simply does not exist. Furthermore, the LIHI criteria does not hold a project applicant responsible for upstream operations or actions unless that applicant is a participating responsible party to the upstream operations. For the record, NAEA has no control of or ownership interest in the operations of TransCanada's Deerfield Project or Brookfield's Bear Swamp Project.

CRWC makes the objection that upstream fish and eel passage should be installed at Gardners Falls although no such passage is required at the downstream dam to the Project. Without such passage downstream, it makes no sense to require these installations until such time as they are installed on the downstream dam to the Project. Paraphrasing the statement in the preceding paragraph, the LIHI criteria does not hold a project applicant responsible for downstream operations or actions unless that applicant is a participating responsible party to the downstream operations. As aforementioned, NAEA has no control of or ownership interest in the operations of TransCanada's Deerfield Project.

CRWC makes a series of statements that the Wilcox Hollow tract is neither properly marked nor maintained. These assertions contradict the comment letter received from the MDCR in conjunction with this LIHI application. Specifically, MDCR made the following statement on the issue of the maintenance of Wilcox Hollow:

"Wilcox Hollow is a recreation area maintained by the Massachusetts DCR (emphasis added) and is one of 10 satellite areas that is managed by the Mohawk Trail State Forest. It is strictly an unstaffed, unimproved, (no structures) day use area allowing access to the Deerfield River for fishing, canoeing, and hiking on the Mahican Mohawk Trail foot path that follows the Deerfield River to the town of Deerfield, MA."

On the issue of poor marking of the entrance to the Wilcox Hollow area, while the MDCR made no mention of the size of the entrance sign to Wilcox Hollow out on Route 2, the MDCR did make the following comment on the signage inside of the park area:

"Their [NAEA's] provision of warning signage along the Wilcox Hollow access road alerting the public to be aware of changing water levels has provided a needed communication for safe recreation activities while in the area."

A review of the latest FERC Environmental Inspection Report found the following conditions at Wilcox Hollow:

"The improvements to the Wilcox Hollow facility included a redesigned entrance from Route 2, additional parking, a turn-around area for cars and trailers, and enhancements to the boat launch and angler fishing area (Photo Nos. 16 through 18). **The Wilcox Hollow facility was in excellent condition (emphasis added)** and was being utilized by boaters and fisherman at the time of inspection.

"The licensee implemented its erosion and sediment control measures during the construction of enhancements and improvements to the Wilcox Hollow Recreation Facility (see Photo No.

18). **The licensee appears to be in compliance with its requirements with regards to all other environmental resources (emphasis added)."**

Finally, a review of the FERC record for the Project since licensing in 1997 to the present showed no reports of poor signage or lack of maintenance at Wilcox Hollow. Accordingly, there appears to be nothing in the record that supports these claims of CRWC. Nevertheless, assuming that LIHI certification is granted to the Project, NAEA is willing to work with CRWC to improve the entrance sign on Route 2 and to alert MDCR of poor road conditions to the entrance road to Wilcox Hollow.

For the aforementioned reasons, NAEA believes that the reasons cited by the MDFG, MDEP and CRWC for LIHI denying its application for certification of the Gardners Falls Project are not supported by the facts or the LIHI criteria. Accordingly, these comments should be dismissed and NAEA reiterates that its LIHI application for the Project should be approved.

If you have any questions or concerns about NAEA's answer, please do not hesitate to contact me.

Sincerely yours,

William P. Short III

NORTH AMERICAN ENERGY ALLIANCE, LLC

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w.shortiii@verizon.net**

May 10, 2011

Via E-Mail Only

Low Impact Hydropower Institute
c/o Mr. Fred Ayer
Executive Director
34 Providence Street
Portland, Maine 04103

Re: Application of Gardners Falls Project for Certification by the Low Impact Hydropower Institute

Dear Mr. Ayer:

After the close of the public comment portion of the certification process of the Gardners Falls Project (the “Project”), the Low Impact Hydropower Institute (“LIHI”) received an additional comment letter from the Deerfield River Watershed Association (“DRWA”). This letter asserts some of the same adverse comments that the Project received from Massachusetts Department of Fish and Game, Massachusetts Department of Environmental Protection and Connecticut River Watershed Council. To that extent, North American Energy Alliance, LLC (“NAEA”) refers LIHI to its reply letter filed with LIHI of April 25, 2011 as its answer to these charges made by DRWA. However, since this letter makes new assertions, NAEA feels that it must respond in order to correct the misimpressions of the Project that DRWA attempts to perpetrate.

DRWA states that the extreme rise and fall of the Deerfield River exposes large areas of the river bottom repeatedly over the day, implying that this occurs in the Project area. DRWA also alleges that these actions have destroyed the river environment by decreasing both the diversity and the density of bug species, promoting bank erosion and creating a “bathtub ring” and interfering with fish spawning. Collectively, these actions have destroyed “the best trout fishery in Massachusetts, and one of the best in New England.” None of these conditions occur in the Project area if they occur at all on the Deerfield River.

The river bottom at Gardners Falls is never exposed, fully or otherwise, let alone exposed repeatedly during the day. DRWA presents no evidence that the Project has destroyed the river environment. NAEA completely refutes those accusations that its actions do any of those aforementioned things. Specifically, NAEA notes that no FERC Environmental Inspection Report has ever made any mention of bank erosion or “bathtub ring.” Instead, the latest report speaks favorably about the recreational fishing that occurs at Wilcox Hollow, an area immediately downstream of the Project’s powerhouse.

While NAEA can understand the desire by DRWA for near-perfect conditions to support a thriving river environment in the Deerfield River, its observations are not accurate and their conclusions are not supported by the facts. NAEA believes that the Project is low impact within the criteria of LIHI. Its operations do not contribute to any dramatic changes to the Deerfield River. Accordingly, LIHI certification should be granted.

DRWA, like the other Opposing Parties, agrees that the Facility is not the direct source of these perceived adverse impacts to the Deerfield River.¹ DRWA acknowledges that that entity may be TransCanada, the operator of seven of the upstream dams to the Project. It alleges that the numerous peaking flows of the TransCanada and Brookfield (the operator of Fife Brook Project, the eighth dam on the Deerfield River) dams that are responsible for what, if any, dramatic change in the Deerfield River that occurs at Gardners Falls. The ability of the Gardners Falls dam to cause an adverse impact on the flows of the Deerfield River simply does not exist.

¹ Specifically, the DRWA letter noted that “The Gardners Falls application must be seen in the context of the flow regime of the other dams on the [Deerfield] river. Since the Gardners Falls dam is situated between the TransCanada number two and number three dams, and since Gardners Falls does not have a large storage capacity, it must run a similar flow regime.”

Furthermore, the LIHI criteria does not hold a project applicant responsible for upstream operations or actions unless that applicant is a participating responsible party to the upstream operations. For the record, NAEA again states that it has no control of or ownership interest in the operations of TransCanada's Deerfield Project or Brookfield's Bear Swamp Project.

For the aforementioned reasons, NAEA believes that the reasons cited by DRWA for LIHI denying its application for certification of the Gardners Falls Project are not supported by the facts or the LIHI criteria. Accordingly, DRWA comments should be dismissed and NAEA reiterates that its LIHI application for the Project should be approved.

If you have any questions or concerns about NAEA's answer, please do not hesitate to contact me.

Sincerely yours,

William P. Short III

cc: John J. Bahrs (via e-mail only)
Kim Marsili (via e-mail only)
David Schmidt (via e-mail only)
Nicholas Hollister (via e-mail only)