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June 16, 2022

VIA ELECTRONIC MAIL

Matt Weaver, Deputy Director
Idaho Department of Water Resources
322 E. Front Street
Boise, ID 83702
rulesinfo@idwr.idaho.gov

RE: Rulemaking – 37.03.05 Safety of Dams and Mine Tailings Impoundment Structure Rules

Dear Mr. Weaver:

Thank you for the opportunity to provide comments on the proposed rules. Some items the Department may want to consider are:

001.02.b. states: “State sovereignty for independent review and approval of engineering design, construction, operation, and maintenance will not be waived due to any overlapping jurisdiction from federal agencies.”

A little more explanation somewhere in the rules would be helpful. Does the state work to review in conjunction with federal regulators like FERC so a project owner receives a consistent message? The wording is a bit concerning because it implies that federal regulatory agencies and the state could come to different determinations which could cause issues for dam operators and owners in trying to comply with different conflicting requirements.

010.16 and 045. Emergency Action Plan. FERC also requires an Emergency Action Plan. Is this in addition to the Emergency Action Plan required by FERC? Will the Emergency Action Plan prepared for FERC meet this state requirement?

010.37 Professional Engineer. The term engineer implies a person licensed as an engineer consistent with this definition. If engineers are utilized from out of state firms to comply with FERC requirements, are they required to get licensure from the Idaho Board of Licensure? Are FERC engineers required to be licensed in Idaho?

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060. Potential Failure Mode. If a potential failure mode study has been prepared for FERC by an out of state engineer, does it meet the requirement for potential failure mode?

The current IDWR engineers and staff work collaboratively with federal regulators and owners. The result is that owners and operators are not put in the position of trying to please different entities with different requirements. The concern is that the rules do not require any collaboration between the state and the federal agencies so depending on the individuals involved, the owners and operators could be placed in a very difficult position. Some guidance in the rules would therefore be very beneficial to all those involved in power production projects.

Thank you for considering these comments.

Sincerely,

JAN M. BENNETTS
Ada County Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Lorna K. Jorgensen", with a long horizontal flourish extending to the right.

Lorna K. Jorgensen
Deputy Prosecuting Attorney

JMB:LKJ:clt