



IDAHO MINING ASSOCIATION

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June 17, 2022

Via email to: rulesinfo@idwr.idaho.gov

Mr. Matt Weaver
IDWR Rules Review Office
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720

**Re: Comments of the Idaho Mining Association
Draft Idaho Department of Water Resources Negotiated Rulemaking on
IDAPA 37-03-05 and 37-03-06, re: Dam Safety and Mine Tailings
Impoundments**

Dear Mr. Weaver:

The Idaho Mining Association is an Idaho-based, multi-member association that advocates for a responsible and sustainable mining industry that benefits Idahoans and the local communities in which they reside.

IMA is recognized as the trusted voice of Idaho's Mining industry through its promotion of the responsible development of Idaho's diverse mineral resources, encouraging economic growth by creating and maintaining high quality jobs, being involved with government to support the interests of Idaho's mining companies, promoting the industries best practices and technologies, demonstrating the importance of the mineral industry to society, and interacting with other organizations on matters of common interest.

IMA fully supports the Governor's desire to cut regulatory red tape and the revolving review of the administrative code through EO 2019-02 and EO 2020-01. With that in mind, IMA understands the reasons that the Idaho Department of Water Resources (IDWR) is reviewing these rules. Further we recognize that the mined tailings impoundment rule has not been updated since recent changes to the Mined Land Reclamation Statute and may need to be reviewed closely to assure operators, regulators, and taxpayers have a regulatory scheme that matches best industry practices to ensure protection of public safety and the environment. With that in mind, we believe we understand why IDWR has decided that this rulemaking should take place and we appreciate the opportunity to comment.

Before IMA members spend a significant effort in evaluating how the proposed combined rule might impact the industry, we asked ourselves whether or not combining these two rules into one met what we viewed as the spirit of the Executive Orders. We view these Orders as focused on easing the regulatory burden on business and allowing an easier interpretation of the regulation

to be followed. Although there are many similarities in these two programs, the differences are vast. The design, construction, maintenance, abandonment and financial assurance requirements, and the contents held behind these dams are distinct. These differences were made clear by the diverse group of stakeholders present on the first rulemaking call and were no doubt the reason IDWR concluded some time ago to promulgate two separate rules. Finding a common interest with so many diverse user groups would seem challenging given the technical expertise represented by each group. It is for these reasons that IMA has taken the position that the rules should remain separate.

It is IMA's request that the department consider going back to a zero base on these rules as two separate chapters. If IDWR then believes that undertaking a rulemaking is still needed to update the mine tailings impoundment structure rules or provide technical changes, a more robust discussion can be had with the experts in each discipline. Should IDWR decide to nevertheless combine both rules together, as currently proposed, IMA members reserve the right to supplement our comments with technical comments which will likely be substantial, as the currently proposed merged rule creates substantial uncertainty for the industry.

We look forward to continuing the dialogue on these regulatory changes and commit to providing technical support at the appropriate time in the process.

Thank you for your consideration of these comments.

Sincerely,



Benjamin Davenport
Executive Vice President
Idaho Mining Association