

SECOND RULEMAKING PUBLIC MEETING REGARDING IDAPA 37.03.05 – MINE TAILINGS IMPOUNDMENT STRUCTURE & IDAPA 37.03.06 – SAFETY OF DAMS

Unofficial Public Meeting Transcript

Thursday, 7/7/2022 at 9:33 AM

Mathew Weaver 00:00

State Office, uh maybe just give it a couple more minutes for people to log on and participate or come and join us in person, so I'll check back in here in just two or three more minutes.

[Distant Conversation 00:11]

Mathew Weaver 02:57

All right, it's 9:33 I think we should go ahead and get started. We're meeting today on July 7, 2022, at 9:33 am, in fulfillment of the governor's zero-based rulemaking initiative set forth and executive order 2020-01. Today's public meeting is the second public Negotiated Rulemaking meeting in association with promulgating a new dam safety rule as required by Idaho, I'm sorry Idaho code 42-1714, which mandates that the Idaho Water Resource Board adopt and revise from time to time such rules as may be necessary for court carrying out the provisions of Idaho code sections 42-1710 through 1721. And these are the code sections that pertain to Idaho's Dam Safety Program and mine tailings impoundment structures. IDWR published its notices of intent to promulgate these rules on May 4, 2022, in Idaho Administrative Bulletin Volume 22 - under docket number 37-0305-2201. To date, this promulgation has been a combination of two former rules IDAPA 37.03.05 Mine Tailings Impoundment Structure Rules and IDAPA 37.03.06 Safety of Dams Rules, both of which have been repealed as part of the ZBR process and are currently being renegotiated.

Mathew Weaver 04:22

A couple of words on etiquette. Please be civil in your conduct and your comments with everyone participating in the rulemaking. If you are online, please ensure that your phone is muted except when you're speaking. We don't want to have to mute folks or kick people out but we will if there's too much disruption. I don't anticipate that, we don't have a real large group here. You can also use the raise your hand feature with WebEx if you're familiar with that. And we've got someone tracking that and we'll get around to calling on you.

Mathew Weaver 04:53

So my name is Mat Weaver, I'm the Deputy Director with the Department of Water Resources I'm also its rules regulation Officer. And I'm joined here today by John Falk, he's the professional engineer who is the appropriate program manager for IDWR's Safety of Dams Program. And then I'm also joined by Sarah Tschohl, she's a paralegal and is supporting all of our rulemaking efforts, including this one.

Mathew Weaver 05:20

So I do have a roster from the previous meeting and from people that have submitted comments. I guess from my standpoint, it might be easiest for me to read down through this roster and put an X by anyone who's participating. A lot of the numbers online don't have names, just numbers, and then we'll pick up anyone that I missed at the end of that. So, we'll start with the roster that I have here, and when you hear your name, please just confirm that you're participating if you are.

Mathew Weaver 05:52

So with Ada County, Lorna Jorgenson.

Lorna Jorgensen 05:59

Yes, I'm here.

Mathew Weaver 06:01

Thank you. Gary Leuzinger with Arrowhead Water District.

Mathew Weaver 06:11

Lucas Yockey with Big Lost River Irrigation District.

Mathew Weaver 06:17

Martin Bilbao with Bilbao and Company.

Martin Bilbao 06:20

Here.

Mathew Weaver 06:27

Mike Klaus with City of Bonners Ferry.

Mathew Weaver 06:35

Ryan Foy with the DeLamar Mining Company.

Ryan Foy 06:40

Here.

Mathew Weaver 06:42

Robert Mullener with DeLamar.

Mathew Weaver 06:50

Mike Spicher with DeLamar.

Mathew Weaver 06:56

Chuck Broschious with Environmental Defense Institute.

Mathew Weaver 07:02

Tami Thatcher with Environmental Defense Institute.

Tami Thatcher 07:04
I'm here, can you hear me?

Mathew Weaver 07:13
We can Tami, thank you.

Mathew Weaver 07:17
Melissa Arnold with Hecla.

Melissa Arnold 07:20
I'm here, thank you.

Mathew Weaver 07:24
Lance Bolan with Hecla.

Mathew Weaver 07:29
Clay Thomas with Hecla.

Mathew Weaver 07:36
And then Will Tiedemann with the Idaho Conservation League, he's here in person and he's signed in.

Mathew Weaver 07:47
Alex Brekke with Idaho Power.

Mathew Weaver 07:53
Chris Edwards with Idaho Power.

Mathew Weaver 07:58
Paul Walz with Idaho Power.

Mathew Weaver 08:04
Tim Arnold with Integra.

Mathew Weaver 08:12
Carlyle Miller with Itafos.

Carlyle Miller 08:17
Here.

Mathew Weaver 08:22
Alan Prouty with Simplot is also here in the room.

Mathew Weaver 08:28
Adam Wadsworth with Simplot.

Mathew Weaver 08:34
John Hoff with Jenkins Creek Ranch.

Mathew Weaver 08:41
Mark Lynn with Lamb Weston.

Mathew Weaver 08:47
Brent Hoffner with Meadowlark Ranch.

Brent Hoffner 08:50
I'm here.

Mathew Weaver 08:51
We can hear you, thank you. Benjamin Davenport. Okay, I'll just note that Mr. Davenport did submit written comments which have been posted to our web page on behalf of mining, Idaho Mining Association.

Alan Prouty 09:18
He's asked me to represent the Idaho Mining Association.

Mathew Weaver 09:21
Okay, and then we also have him down as with an entity called Mine Idaho, are you, do you know what that, is that?

Alan Prouty 09:29
That is just their website.

Mathew Weaver 09:31
Oh okay. But maybe for the purposes of this rulemaking, who he represents, mining, Idaho Mining Association.

Alan Prouty 09:38
Yes.

Mathew Weaver 09:39
Okay.

Mathew Weaver 09:45
Mark Ipsen with Montpelier Irrigation Company.

Mathew Weaver 09:53
Robyn Armstrong with the Nez Perce Tribe Department of Fisheries.

Robyn Armstrong 09:58
I'm here, thank you

Mathew Weaver 10:02
Michael Lopez with the Nez Perce Tribe legal counsel.

Mathew Weaver 10:12
Gene Bosley with Perpetua.

Gene Bosley 10:15
I'm here.

Mathew Weaver 10:20
Alan Haslam with Perpetua.

Mathew Weaver 10:27
Mckinsey Lyon with Perpetua.

Mathew Weaver 10:32
Jordan Nielsen with Perpetua.

Gene Bosley 10:37
Jordan is on vacation.

Mathew Weaver 10:39
Thanks. Rod Gonsales with Rod Gonsales Pitchfork Ranch.

Mathew Weaver 10:49
Fred Coriell with Save the South Fork, Save the South Fork Salmon, sorry

Mathew Weaver 11:02
Suzanne Budge, SBS Associates.

Mathew Weaver 11:10
James South, Sun Valley Resort.

Mathew Weaver 11:17
Erika Malmen, Thompson Creek Mine.

Mathew Weaver 11:25
John Welsh, Welsh Hagan Associates.

John Welsh 11:30
I'm here.

Mathew Weaver 11:36
And then Will Smith with Westerberg and Associates.

Will Smith 11:42

Here.

Mathew Weaver 11:47

All right, thanks and I've missed one person in the room.

Kaycee Royer 11:52

Kaycee Royer.

Mathew Weaver 11:53

Okay. Can we get your email before you leave? Did you?

Kaycee Royer 12:03

Yeah.

Mathew Weaver 12:03

Okay perfect. And did we miss anyone online participating?

Michael McCurdy 12:16

This is Michael McCurdy with Idaho Department of Environmental Quality.

Mathew Weaver 12:22

Thanks Mike.

Unknown 12:23

[Unintelligible—multiple voices] Company.

Mathew Weaver 12:32

I'm sorry. Sounds like we missed that last person.

Niko Lostra 12:36

Nico Lostra with Bibao and Company.

Mathew Weaver 12:38

Okay, Nico. Is that everyone? All right.

Mathew Weaver 12:59

Well, with introductions aside, kind of move on to some opening comments here that I've prepared. I want to thank folks for participating. And I also want to thank in particular, those people that submitted written comments, they are quite helpful to the process. You're more than welcome to submit oral testimony, but when we do get that in writing, it's easier for us to identify what the specific comment is and respond. quite helpful. Comments ranged from being very general in nature and focused on the process to hyper specific comments focused on technical details in the rule. All of the comments are useful. And we are preparing a summary of the comments and a summary of the department's responses to that. But that is a large task and it's not completed yet. Hope to have it done.

Mathew Weaver 13:55

IDWR is working on a second draft rule. And depending on today's conversation, we hope to have it published by next Thursday, July 14. However, as a threshold issue, I think to moving forward, it's appropriate to discuss the issue of separating the dam safety and mine tailings impoundment structure rules, which is a request that was made in written comments by several entities.

Mathew Weaver 14:22

As I said several of these entities requested that the department reconsider combining the dam safety rules and the mine tailings impoundment rules into a single rule. But the department is reluctant to do that for a number of reasons which I'll put out here and discuss and then would invite some discussion from, from participants. We've moved down this path for a number of reasons, 1) combining the rule achieves the objectives of the Governor's zero-based rulemaking initiative that reduces redundancy. It cleans up inconsistencies with Idaho code, and it reduces regulatory burden which is the primary objective of the Governor, by simplifying individual rule complexities and reducing the overall number of rules.

Mathew Weaver 15:08

IDWR views mine tailings impoundment structures as a subcategory of dams, not as a separate and distinct structure class needing its own rules. And I think you can see this in the Idaho Statutes, Title 42 Chapter 17, Sub-chapters 10 through 21. Those are the chapters that address both dam safety, regulated dams and mine tailings impoundment structures.

Mathew Weaver 15:36

Some of the comments do point out the differences between regulating dams that impound water and regulating dams that impound tailings and/or tailings and water. Some of those differences are dealing with technical differences between the two. And then of course, obviously, the bonding requirements associated with mine tailing impoundment structures. But there are many similarities between regulating dams that impound water and that impound tailings. Similarities include the legal authority, definitions and dam features, technical design plans, specification and report requirements, needs for emergency action plans. Much of the design considerations for both are similar, much of the construction methods for both are similar. And then the operation and maintenance requirements are similar in many ways.

Mathew Weaver 16:31

Reasons put forth for not combining the rule included: technical differences between mine tailings impoundment structures and other dams, difficulty in finding consensus with a diverse combined stakeholder group that we've got by combining the two rules, and then a concern that merging the rules creates uncertainty in the mining community.

John Falk 16:54

There may be one more that, yes greenlight. There may be the other with the dimensional aspect. Statute does not involve the Water Resources Department for mine tailings structures that are less than 30 feet tall. The Dam Safety statutes include all structures that are 10 feet and 50-acre feet storage capacity. So there is that distinction. But other agencies are included in the mine tailings impoundment structures rules, where the dam safety statutes are pretty much stand alone with the Idaho Department of Water Resources.

Mathew Weaver 17:56

So I'd invite comment from people participating in today's rulemaking, I am interested for more detail on how merging the rules creates uncertainty in the mining community. That was one of the comments that was put forth. And I think it would just be useful for us to have a little bit more understanding of concerns about moving forward with, with the combined rule.

Mathew Weaver 18:23

So in the room, I don't know if anyone would like to come up to the microphone. We'll go with Alan first and with Will. And then we'll move to folks online. State your name for the record.

Alan Prouty 18:37

This is Alan Prouty and I'm here today ...

Sarah Tschohl 18:38

Wait, real quick...

Alan Prouty 18:39

... to represent.

Sarah Tschohl 18:39

... make sure to hit that button.

Mathew Weaver 17:56

Hit that button right there. There you go, sir.

Alan Prouty 18:44

This is Alan Prouty here representing today the Idaho Mining Association and J.R. Supply Company and both organizations had submitted written comments recommending that the department go back to having two separate rules. And I think first off from just a big picture perspective. You know, we realize that the governor through the executive order is working on having a careful evaluation done around the rules and looking for opportunities to streamline those. But I think unfortunately, what we're seeing is that, and I think part of the intent was that hopefully we're making the regulations easier to utilize, to be utilized by the regulated community, easier to understand easier to follow. I think in the case that combining these two, we're not achieving that objective.

Alan Prouty 19:41

As within the mining industry, as we have looked at the initial draft that the department put together that does the combination, I think that there are certain aspects related to what I'm going to call overall dam safety. That I don't know that they fit real well and I think just add regulatory confusion as to how that applies to mine tailings impoundments. And so, from our perspective, we really do think it'd be better to keep them separate.

Alan Prouty 20:16

Appreciate what the department has just said around they're thinking about wanting to continue with one rule. But we do think it's important that they actually stay as separate rulemakings. So I'm not sure, do you stand for questions that you might have?

John Falk 20:36

Thank you. I just have one comment that mine tailings impoundment structures deserve to be looked at with regard to safety. Some of the most recent, huge failures have involved mine tailings impoundment structures, therefore, dam safety has to include mine tailings impoundment structures, so whether they're split apart, or combined. The statute 1709 It's the intent of the legislature to regulate the structures for public safety. That's, that's the intent.

Alan Prouty 21:16

Yes, and I understand that, I refer to the dam safety, because I think that's specifically what those existing rules have been called to differentiate them from the mine from mine tailings impoundment regulation. So, agree wholeheartedly with that and except, we don't, we're not saying that we're opposed to going back and looking at the existing rules and seeing if there are some modifications that are needed. We just prefer that they be their own separate rule. Alright, hey, thank you.

Mathew Weaver 21:53

I have one question for you, Mr. Prouty. So Mat Weaver here and the former person talking was John Faulk with Department of Water Resources. Um, do you think it would be possible for us to add clarity to the draft rule in the second draft that would address some of your concerns that perhaps it's not clear if certain requirements in the new rules should be or not, or are binding on mine tailings impoundment structures? So could we work with the existing rule to address most of your concerns.

Alan Prouty 22:25

I suppose anything is possible. But it's hard to say without really knowing the details, right. So we always say the devil's in the details, right, you know, and how they like even some things, like definitions, you know, maybe in terms of what I'm going to call tailings impoundments. A certain definition may be more appropriate for that versus other types of impoundments, right? So, I think that's the crux of the problem.

Mathew Weaver 23:01

Thank you.

Alan Prouty 23:01

Hey, thank you.

Mathew Weaver 23:07

Go ahead, Mr. Tedemann.

Will Tiedemann 23:08

Tiedemann.

Mathew Weaver 23:09

Tiedemann.

Will Tiedemann 23:09

Yeah, this is Will Tiedemann with the Idaho Conservation League here in person. Had a couple of questions hoping to get some clarity on, but I guess maybe a comment first. I think the issue of whether combining these rules is prudent or not, is really two issues, it is not prudent for people who are used to two separate rules and want to continue to understand them that way. But perhaps for future, you know, industry or individuals that these rules are relevant to coming into a rule that is combined, in the future, maybe more easy for them to understand. So, I think obviously IDWR has to balance what is the value of that future benefit of people coming in and understanding these rules from, in a vacuum, so to say, versus the effort that is required of industry and all other individual individuals to get up to speed and be used to for maybe lack of a better term of a combined rule. So, I don't want to assume but I am curious to know if some of the individuals in the industry have taken the full time to diagnose and dive into the technical details of the rule. And whether there is some reluctance to spend that effort that maybe is prudent on their part. I spent a good time in the rules not every line by line because to see how the changes from going from two to one line by line is a significant effort. I know Tami Thatcher with the Environmental Defense Institute, maybe more than anyone, has combed over these rules and tried to go line by line. What I would say and kind of getting at my first question is, has, when IDWR went and combined these two rules into one, was there a record kept of the technical substantive changes to the rules, previous two rules versus the strawman. I can't imagine somebody was going through and just making technical changes without a summary record in an Excel sheet or some other document, has that been done? Does that exist when the process was being?

Mathew Weaver 25:07

Go ahead, John.

John Falk 25:10

Yes, initially, we took the dam safety rules and the mine tailings rules, we laid them out, side by side. And each rule for each category was examined. They were laid in a single publication, which, which we put together internally. After that was done, we attempted to decide which new rule they would fit best under. And then after that had been completed, we went through and made technical changes to the proposed draft. So it was, initially it was a three-step process, which we do have record of here. It isn't the cleanest thing to look at, but we do have record of it. So that is available. I believe we can make that available, if you would like to view it.

Will Tiedemann 26:24

Yeah, and I guess I'll follow up. Does that document for example, you know, there was technical changes to some of the design considerations for flood events, 500 years to 100 years kind of thing, was, when technical substantive changes were made to the rule, is there a document that says why it was done and justifying why it was done? And I guess I'll follow up that, again, with the statute, Executive Order has language saying where the benefits of regulations can be still achieved by other means that's the intent, and has the department along with those notes said, "Okay, we're reducing regulation, there's a benefit previously, for this regulation. Here's the proposed alternative for how that benefit will be realized." Is there any notes or documents for, I guess, following up on that part of the executive order?

Mathew Weaver 27:12

So, Mr. Tiedemann, not, first just to add a little bit to John's response to you from your previous comment, and then address the latter. First, John referred to a large document that we published on our

web page, I'm holding a physical copy of it here in my hand, this was published to our web page as the Comparison of Existing IDAPA 37.03.05 and Existing IDAPA 37.03.06 Rules. It's dated May 3, 2022. This was kind of the work product that we put together to launch this effort. And it is messy, and maybe is lacking some of the comment and detail that you'd like. And then in addition, we put together IDAPA 37.03.05 and 37.03.06 Rule Comparison Matrix, which is also published to our web page, dated May 23. And that, again, is a more succinct one-page summary of here's what was in the mine tailings, here's what was in dam safety, our very cursory review of: are these the same, are they similar, or are they unique to each rule? And then combining them and it's kind of, I look at it as the path, the flowchart, I guess, if you will, to lay out where things went from the existing rule to the new rule. So I think those are both useful tools. In addition to that, I was just looking at all of the drafts that we had during this process, and there's 21 versions of the drafts that department staff worked on in getting to that draft rule. Happy to publish that out to the webpage, maybe as a zip file. And so people can just see all of that work product. I'm not sure there's a lot of value in it, but people might find value in it, I guess, that you'll see in that a lot of track and underscoring and then probably some comments in the margins where there was some discussion, you know, back and forth and drafting or in preparing that draft rule. Other than that, department staff, myself, John, and Corey Skinner, who is a longtime engineer at the department doing dam safety work, we met a handful of times in person to work through these drafts. And so I think a lot of that discussion you're looking for probably wasn't documented in writing, in fact I know it wasn't documented in writing.

Mathew Weaver 29:25

The last comment I would make is that we are receiving all of your written comments, and we are preparing a summary and I think a lot of perhaps that justification or thought that you're looking for on the department's process will be included in those responses. And that's not prepared yet. It hasn't been published yet.

Will Tiedemann 29:45

And I guess I'll respond to that. That I think right now, the process is inadequate to kind of meet what that executive order states. It is not clear what regulations are being reduced and what alternatives and how that benefit of those regulations is otherwise being fulfilled. And the executive order also talks about maximizing public parti...particip...parci... participation. And I think that is not, also not being carried out, because clearly there are folks in the industry who have not even said, "we won't look at this, because it's too hard". And it's not being maximized, whether there's a shared burden for people to do their due diligence and IDWR to make that as easy as possible. I think that's a shared burden.

Will Tiedemann 30:35

To compare and contrast this to other agencies, for example, IDEQ, I don't know if they've run into a challenge such as this, where they've tried to combine a rule. It's always been one chap, you know, one chapter to one chapter. But typically, it's been, they have published a red line strikeout of the draft rule, there's been a public meeting where they go over all the edits, and they talk about, you know, we have discussion, here's why we change these rules here, here's why we did that. And it's very clear and transparent, what is what is changing and why it's being done. I think that has been a great example for how this process has been going.

Will Tiedemann 31:08

Like I said, I tend to lean on, I think perhaps it is best to keep the chapters separate, so a similar process can be done. This way it's absolutely clear and transparent versus what is changing and there can be discussion for why it is changing. Again, IDWR probably has to weigh the benefits of, you know, in a vacuum, and future users approaching one chapter versus two might have benefit. And whether that outweighs, you know, whether keeping them separate, that's, you know, that's maybe a larger discussion.

Will Tiedemann 31:37

So I guess, again, to reiterate, I think it is imperative that IDWR needs to help maximize precipitation [sic] and needs to be absolutely clear on following with the executive order on where regulation is being reduced, it needs to be shown in depth, justified, how that benefit is being maintained otherwise. And I guess I don't want to take up too much time, but I feel like I do have some other follow up quick, important questions is that?

Mathew Weaver 32:01

Well one second, Mr., Mr. Tiedemann.

Will Tiedemann 32:03

Sure.

Mathew Weaver 32:03

Just a little bit of response. Don't worry about time we've scheduled the whole day. So we want the comment, the feedback, we appreciate it.

Mathew Weaver 32:10

I will say that I think it is fair to ask whether separating or going forward with the combined rule, that's a threshold question to me, I think it needs to be answered. And, and so for those people that haven't submitted detailed comments yet, I guess I wish they had, but I can appreciate why they didn't. Because I think it's kind of a fundamental question, we need to get past it, we need to make that decision to move forward one way or another.

Mathew Weaver 32:31

Regarding the concern about transparency, I think we probably initially would have liked to have had a, a document where we crossed out and underlined. But it became pretty obvious to us pretty early on that that wasn't going to be feasible. And that will be the process going forward. So from draft one moving forward, every document will have track changes associated with it. And we're happy to have discussion about that in upcoming negotiated meetings. So just engage in Q&A on that. We're also happy to do that with a document that exists today. So if people want to look at that draft document that's been published and ask us specific questions—here today—about why we changed things. You know, I think that's an appropriate use of our time today.

Will Tiedemann 33:19

Yeah, I agree. Thank you, and I am familiar with, you know, the documents you shared for the comparison matrix. It is useful and a starting place, but again, it doesn't, doesn't immediately address, you know, we, here's the language of this rule and here's how it is directly changed. I guess you can

infer that by looking at it. But there's no commentary as to why it was changed. And I think that's where the lack of transparency is ICL's [sic] issue right now,

Mathew Weaver 33:46

I might, I might also just comment that the spirit of the Governor's initiative is zero-base, which is that you don't merely edit the previous version, but you start from the basis of no regulation, and then you build up the new regulation. And so, in many ways, I think we've fulfilled the spirit of that executive order, perhaps more than in some of the other rulemakings that I participated or familiar with, because we did see the opportunity here to genuinely create a better project, product.

Will Tiedemann 34:13

True, and yeah, I agree that is the spirit of the regulation. But I would say, to, to do that process without acknowledging what exists before, doesn't make sense. Again, you presumably have these rules that were, that were well negotiated and reviewed in the past, and language and technical details and requirements were included for very specific reasons. To say "it is all worthless and wasn't done for purpose, and we need to start from zero, and we should not compare and contrast those" is I think, is wrong, obviously. And that's when again, kind of going back to the transparency it's very difficult to tell what the technical substantive changes from the current chapters and rules to what's currently happening.

John Falk 35:00

I don't want to be argumentative here, but I do need to point out that the statute was changed in 2016. Where the size and the storage capacity of reservoirs and dams was, was revised for state regulation and professional engineer design requirements. So we've been working on statutes, what, six years now where the rules are in direct conflict with statute. Therefore, a lot of these changes had to be made in order to now match existing statute. So that was a, that was a big push. COVID kind of interrupted this whole process, not an excuse, but just a reality. So we're perhaps two years behind the curve on this. But we did not construct this stuff out of whole cloth. You can go back to existing rule on both mine tailings impoundment structures, and the dam safety statutes to see what existed. And we tried to bring in the important items that still apply and are consistent with statute and those that are duplicative or no longer apply due to changed engineering standards, construction standards were removed. So, there is a path, you're right, it isn't spelled out step by step, but the information is available, and it is there. So, I just, you go back, what we had to do in order to get to this place.

Will Tiedemann 37:07

So maybe, kinda understand your, your comments there. Are you saying because statute was changed, the rules did no longer met statute, they needed to be updated, and some of those updates due to changes in statute are happening as part of the ZBR?

John Falk 37:22

That's, that's correct.

Will Tiedemann 37:24

Then I would argue that, that is outside the scope of ZBR and was not fully transparent towards the public. Please correct, maybe, maybe I missed some language on, you know, IDWR's website. But I

think that adds to the confusion, saying, you know. Obviously, this statute is statute, they must be changed but it adds to the confusion and lack of transparency on why things are happening. Are they happening because, you know was technical changes made, because they need to comply with statute, or because ZBR and we don't, you know, we think these benefits can be, you know, realized in other ways without regulation?

Mathew Weaver 37:59

Mr. Tiedemann, I would just say, Mat Weaver here, I don't think that those are mutually exclusive. I think all of that occurred. Part of the guidance, I think, if you go back and read the ZBR initiative is to correct inconsistencies between statute and rule. For many agencies, our, our department in particular, didn't do a lot of year in and year out rulemaking because it is an arduous process. And so you did get a divergence between the rule and the statute. If you look back through some of those rules, before we got into this, you know, annual cycle of the of the legislature not reapp..., you know, not repromulgating our rules or reauthorizing the rules, you can see that those dates of when the rule was last changed, in many instances dated back to the 90s. And so, you know, I would just say, nothing nefarious, no obfuscation intended here, we're just taking this opportunity to update those rules and close that, that gap between what the rule used to say and what the law now says. And just in general, we want to be transparent. We're not up here saying that transparency is not appropriate, that we don't want to participate with you now to bring light to these changes and understanding to why the Department made these. But that traditional role that you've outlined, where there's this clear document with what we started from and where we're at now and what the changes are, I just think that that's difficult at this point to achieve. And I'm not sure we could have achieved because of the ZBR aspect of this in the combination of the two rules. But moving forward, we're committed to hearing your comments and questions and providing the justification for the changes or at least the, you know, our reasoning.

Will Tiedemann 39:41

Gotcha. Thank you. And I acknowledge that it is, that you make correct points. That, perhaps it does make sense, but I guess perhaps it just could have been a little more transparent about how some of these changes are strictly more ZBR, as in this is unclear, this is poorly worded and caused confusion over-regulation versus this is really changing, primarily because of changes in statute. I think that could be a little more transparent.

Will Tiedemann 40:13

And I guess another question I wanted to kind of, that is related is, are there, I'm not as familiar with some of you know IDWR's other, you know, regs, but is there an overarching federal regulation or that, for the state regulations, for example, you know, surface water standards, you know, within IDEQ have to comply with the Clean Water Act, right. So they have to at least, you know, meet those requirements. Is there something comparable here where a federal agency or entity [unintelligible] will be reviewing these rules and have to approve them? In the similar manner that happens with EPA and IDEQ?

John Falk 40:51

This is John Falk. No, there is not, the state attempts to follow the general recommendations and standards that are outlaw, outlined in, that other federal safety, dam safety agencies use. And there's also an organization called the Association of State Dam Safety Officials (ASDSO) that compiles the various rules and regulations for each state, and tries to promote improvement in safety standards for these types of structures. There's also international organizations that do, do similar but unlike, say, EPA, and

IDEQ, there is no federal requirement that sits on top of the state's dam safety statutes. There's the national Dam Safety Program Act that was initiated, it came into being after the Teton failure. So in that sense, we're all working in the same direction, but there is not, there's not an overarching regulation as you, as you asked.

Will Tiedemann 42:26

Okay, thank you. Well, that's all my questions. Like I said, I, I just want to leave with the final kind of big picture. I guess my bottom-line concern is that, for many of these technical and substantive changes, there was, they went on randomly, they were done deliberately, with reason and with justification. And I think, to meet the ZBR and to meet maximum public participation, I think IDWR needs to outline where regulations are being reduced, where that realized benefit will be maintained elsewhere. And I feel that process is not adequately being done right now. And that's all I have. Thank you for your time.

Mathew Weaver 43:06

One more person in the room, do you wish to provide comment? Sorry, we had one more person in the room. She's not going to comment today. Maybe open it up for comment or questions to people participating online. If you do have the ability, please raise your hand and then we can call on you.

Mathew Weaver 43:27

Sarah, does anyone have their hand raised right now?

Sarah Tschohl 43:30

Not currently.

Mathew Weaver 43:34

Anyone like to take the floor?

Tami Thatcher 43:42

This is Tami Thatcher. Can you hear me?

Mathew Weaver 43:45

We can. Thank you.

Tami Thatcher 43:48

I would, I would like to comment. I don't believe that this second public meeting should have ever been conducted without your written next strawman and without the compilation of the comments you've received and your response to them. I'm basically stunned that you're conducting this meeting, not having provided any additional information except, except that you intend to stay the course despite pleading to you that what you're doing creates a lack of clarity, more confusion, and the, the statements you have presented to say how you went through 21 versions, and carefully made all these rules. It doesn't dovetail with the multitude of errors and mistakes in the strawman that was issued. So somehow this agency is underestimating the level of effort involved.

Tami Thatcher 45:10

And I cannot believe that this second public comment, so called public comment opportunity where we don't have anything to comment on, is being, it's obviously just stepping through the process,

placeholder to make it appear that you allow the public to give input, but we didn't have anything to input, to provide input on in the second meeting. So I'm really, I'm still in shock and awe, I'm in shock at the, the way that safety and design regulations have been greatly reduced. This obviously has something to do with the large campaign donations to people in political offices in this state from the mining industry. You reduce costs when you reduce safety standards, and your changes reduce safety standards, without ever coming out and saying that's what you're doing. But you do it in a multitude of ways and you never justify it. And this song and dance you guys are giving, to me, it's, it's shocking, giving the, the importance to the environment, and to human health and safety of what it is you're, you're making rules on.

Tami Thatcher 46:38

It's just, it's just shocking. And there's no way that this public meeting should count as any kind of public opportunity, because we had nothing more to review, you did not provide a compilation of your responses to the comments, other than your intention is to ignore all of the comments you've received. To say, no, you're going to combine the two rules into one, despite what anybody says, and no, you're not going to go back and do a red line strikeout from the beginning, so that we can see how this really changed, you're only going to start from your midpoint of this initial strawman, which, which was making dozens and dozens of rule changes that were not just combining the two rules, it was changing the requirements in the rules, which you do not go through and justify or even acknowledge that you're doing. So I want that to be clear this, you guys go ahead and issue your next version, but then you need to hold another public meeting, this public meeting should not count. So I hope that folks take some time to read the comments that were posted, because this meeting has really not portrayed in a meaningful way, all of the problems with the rulemaking effort thus far, it has really mis-portrayed everything to do with what people made comments on that were of substance. And these are very important rules that affect the environment, affect human safety. And, and I am still in shock and awe at how you guys are whitewashing through a massive amount of safety, design requirement reductions. So thank you. That's my comment.

Mathew Weaver 48:54

Thank you, Mr. Thatcher. Just a couple of things quickly in response, I just want to assure you that your comments are being read. I personally have spent multiple days, more than three days reviewing comments, preparing written responses, researching legislation, researching other states and how they do things, in preparing the responses. It's a large work effort. It wasn't done, done in time for this meeting. When you say that this meeting shouldn't count I don't know what you mean. It is a public meeting. We can have more, I anticipate that we need to have more. We'll save that for the last agenda item here today.

Mathew Weaver 49:34

I want to give you that opportunity, everyone that opportunity, to ask questions and to hear the department's reasons for the changes. I would also just comment that the dam safety engineers at the department have dedicated their professional careers to pursuing public safety and protection of private property by ensuring that dams and mine tailings impoundment structures are constructed properly, designed properly, operated and maintained properly. And so, I would just ask that you'd be a little bit more sensitive when you describe the careers of these people and our work efforts as a sham, or having some motive other than ensuring public health and safety. There have been a lot of changes at the professional standards to the statutes surrounding this field, since these rules were last modified. There

are a lot of changes, we want to make sure that you understand why we've made them and then we're transparent.

Tami Thatcher 50:34

I would like to say, I said holding this public meeting without your compilation of responses to comments was a sham, because there was nothing for the public to review, you telling me that you've reviewed the comments, does not tell me how you are responding to the comments. Okay. So I said this public meaning is a sham, I did nothing to imply disrespect to the professionals. However, I pointed out dozens of errors. And you know, you have admitted to too many errors in the draft, in the strawman. And that tells what I said was, you have not, you have underestimated the level of effort that needed to go into this. And that was in no way disrespectful to any of the professionals on your staff. But you need to be explaining why you had so many error throughout the strawman. The strawman you tell us you had 21 versions of, so there's something wrong with the level of effort and the level of review whether people are not given enough time to sit down and concentrate, I don't know what it is. But there's something very wrong with the entire process, when me, not a dam expert, can pick out dozens of errors in your strawman. And, and I can see you, you know, you have refused to acknowledge the multitude of errors that were in that strawman. I suppose that's embarrassing. And I'm sorry if that's embarrassing. But that is not a disrespect to the professionals, it just suggests that people have not been given the time, undistracted time, to really go through this. And part of it is the whole process of—make changes on the fly, that you're not going to explain to the public that are changing decades of dam safety regulations, and you don't feel the need to explain it.

Tami Thatcher 52:48

Your mining people can't understand it. Certainly judges and other people are not going to be able to understand why you did what you did. We can't even follow what you did, it was so unclear and it was so riddled with so many mistakes. You know, and I'm not expecting a high-quality product in the short time that you claim one is going to be coming out. And I'd like I think we need a very high-quality product. You do have the dedicated professionals. But somehow, this process has been so fragmented, and people are, you know, maybe owning this little part or that little part. And here were all these mistakes. And I think you need to acknowledge there's a problem there, and it is not because I created a problem. I, I shouldn't have been find, there shouldn't have been all those errors to find. And you need to be explaining why all those errors were in the strawman. So thank you, I'm sorry to go on for so long.

Mathew Weaver 54:01

Alright Miss Thatcher, thank you for your comments.

Mathew Weaver 54:12

Anyone else wish to have the floor?

Mathew Weaver 54:25

And again, we've scheduled a bit of time here today. I do think the meeting is valuable, as I said we had kind of this threshold question of whether to move forward with separate or combined rules. I did want the opportunity to hear questions on that and engage, we've had that. But we do have more time and if people wanted to ask specific questions about the draft rule that, that has already been published and hear responses from the department, we're here today to do that. If no one's ready to engage, I guess in that detail. We can think about scheduling the next meeting.

John Falk 55:13

I'd like to encourage everyone who's here to look at the draft, read the language that each rule addresses and comment on the existing rule. Focus on the existing rule, certainly look back and see how it may have changed. But look at the rule itself with regard to the, the proposed safety and technical issues that it addresses that, that I think is real helpful for us. We, we apologize that not everything is ready for the meeting, perhaps as you may have anticipated or desired. But, this is a continuing process, we're not trying to whitewash anything. And we ask for your assistance as well, certainly notifying us of mistakes is very helpful, sometimes they just get missed. But we do intend to make corrections as we proceed through this, through this process.

Mathew Weaver 56:58

I, I don't see any hands up. One more, I guess, chance for people to, to ask questions or provide additional comment here today not, not to be the end of all comment by any means.

Mathew Weaver 57:22

Well, seeing and hearing nothing.

Mathew Weaver 57:27

There is this fundamental question of whether to move forward with separate rules or continue forward on the path that we've laid out here with a combined rule. I think the Notice of Intent publication probably allows us to go either direction, so it wouldn't require any additional publications in the administrative bulletin. I will just say from my own part, I feel somewhat committed to moving forward. But I want to elevate this question and this discussion to the Director of the Department of Water Resources and the Governor's office. And I'll commit to do that here over the next week. Have the discussion tell them where we're at, see if they feel strongly one way or another. So, you know, within a week's time, I would like to send out communication to all of the stakeholders on that regard. And if we do move forward with a combined rule, then have that draft, that second draft rule out. Again, within a week's time. It was close, I worked hard to get it done for this meeting, I apologize that I fell short of that. Tami, I think when you see that, you'll see that we've at least engaged in good faith to answer many of your questions.

Mathew Weaver 58:44

What I would suggest, if we move forward, is to schedule a third meeting and get it on the calendar. If ultimately we bifurcate the rules and move forward with separate rulemakings we probably would need to vacate that hearing date, and schedule, you know, additional hearing dates that are out a little bit further into the future. If we move forward under the combined rule, then you'll have the work product out there a second draft, you'll have a summary of comments and responses. And I think it would be appropriate to have a third meeting, where we come together and we make ourselves available to answer specific questions to that second draft. And then have another period of written comment after that third meeting, and another potential draft before we get to the proposed rulemaking stage.

Mathew Weaver 59:39

Yes, Mr. Tiedemann

Will Tiedemann 59:40

I just want to make one final comment that I thank the department for their time and effort on this. I come from working at the state, at IDEQ previously, it is often a thankless job. So I thank you for your effort, I appreciate that. I am confident that we can move forward and reach a good resolution. But I do want to reiterate, you know, I think there, there are errors that need correcting and I am confident we'll get through that. But it doesn't mean that the department isn't, isn't working hard on this. So, thank you.

Mathew Weaver 1:00:11

Thank you, I appreciate those comments.

Mathew Weaver 1:00:14

So I have the July calendar up in front of me. And my thought for scheduling the third public negotiated meeting would be three weeks from today, that'd be Thursday, July 28.

Sarah Tschohl 1:00:31

I will not be here at that time.

Mathew Weaver 1:00:33

Okay. We'll have to recruit backup. Thanks, Sarah.

Mathew Weaver 1:00:48

So two possible paths forward, moving forward under the combined rule, we would have that third negotiated meeting on the 28th, you would have at least two other work products to review a week from today. That would be the second draft, that would be a summary of comments and responses. But if we move forward under separate rules, we would probably vacate that July 28 date and send out some kind of scheduling notice to all of the participants regarding those separate rulemakings.

Mathew Weaver 1:01:24

Without any further comment, I guess we're adjourned for the day. Again, I appreciate your participation in person and in submitting written comments. Negotiated rulemaking is often contentious. But hopefully by everyone participate in all sides of the issue we're going to have a strong rule at the end of this, or, or multiple rules. Thank you everyone. Have a good day.