IDAHO MINING ASSOCIATION

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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 Dockets 37-03-05 and 37-03-06, re: Dam Safety and Mine Tailings Impoundments

Dear Mr. Weaver:

The Idaho Mining Association (IMA) 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 industry's best practices and technologies, demonstrating the importance of the mineral industry to society, and interacting with other organizations on matters of common interest.

IMA appreciates the Idaho Department of Water Resources (IDWR) application of the Zero Based Rulemaking efforts outlined by Governor Little in E.O. 2020-01. Further, we appreciate the ability to comment on these efforts.

IDWR's decision to bifurcate the proposed rule, thus not combining the chapters is greatly appreciated by IMA and we fully support the department's decision to go forward as such. We believe this allows for a clearer understanding of the rules for the regulated community.

Regarding IDAPA 37.03.05, Mine Tailings Impoundments, we appreciate the Department's desire to sync the rule with Idaho's Mined Land Reclamation Act. This small but meaningful change assures that mine tailings impoundments will have adequate financial assurance review at least once every five years. Appropriate and adequate financial assurances are essential to protect industry and most importantly, the taxpayers of Idaho.

Regarding IDAPA 37.03.06, Dam Safety, IMA shares the concerns expressed during the meeting on the difficulty of tracking the rule changes from the current rule to the proposed draft. Similar to other stakeholders, we would benefit from a document that tracks current standard to the draft proposal on the Safety of Dams.

Specific to the proposed draft language, we offer the following comments, listed in order of appearance in the proposed draft Rule:

In definition 23, please add "the study of" to the definition of hydraulics.

Definition 28 is overly specific to lakes given that most levees are along flowing waterways (and also subject to the Stream Alteration Rule). Please consider expanding the definition, and threshold heights, to work for both lake (as it is now) and river levees (where the height is measured locally owing to sloping water surface and sloping levee crest).

Definition 37 defines the upper end of the size for a small dam, but should recognize the lower end or that dams smaller than the lower range in the subsequent size classification table are unregulated, or a definition could be added for unregulated dam.

In 25.2, it is unclear whether a tailings impoundment that is also regulated under 03.06 must meet the listed Rules, and we suggest adding "as applicable" or similar since not all of the listed Rules will be applicable to a given dam (new or existing).

In section 45, final sentence, and other instances where both life and property are invoked, "damage" would be better expressed as "endanger."

In Section 50.1, the minimum downstream slope is now 2.5:1, whereas previously it was 2:1 as is typical for most other dam safety regulations. While undoubtably more conservative, this will add largely unnecessary analysis and documentation requirements for certain small, low-risk impoundments such as lined water storage ponds. Large or higher-risk facilities would require a stability analysis in any case.

The seismic section (50.1.d.) appears to have been completely overhauled, and now requires a dynamic deformation analysis under more circumstances than before based on language of "pseudostatic…[only] acceptable for…non-liquifiable soils" in 50.1.d.i., and requiring deformation analysis for "foundations that may be subject to liquefaction" in 50.1.d.ii. This would seem to prescribe dynamic deformation analysis in cases where such an analysis would not necessarily be warranted, such as where small pockets of potentially liquefiable soils exist but either do not liquefy at the design earthquake event or do not affect the structure. In such cases, an additional post-earthquake analysis using post-liquefaction strength may be appropriate rather than a full dynamic deformation analysis. We suggest adding clarifying language allowing for alternative analysis approaches as appropriate.

Additionally, in the overhaul of the seismic section, landslide-related content appears to have been trimmed and merged with seismic report content requirements. We suggest the Department separate landslide evaluation requirements from the required seismic report contents of 50.1.d.iii. as the present Rule does, and strike the word "geologic," in recognition of the fact that seismic hazard analysis and geohazard evaluations (including landslide and/or avalanche) are usually the purview of different specialty consultants and normally prepared under separate cover. (50.1.d., iii)

Section 50.1.d.iv. appears to mandate the use of accelerations obtained from USGS seismic hazard maps in the stability analysis. While the USGS maps should always be consulted, it is not necessary to carry the information contained therein forward to the stability analysis if better

site-specific estimates of ground acceleration are available. The Rule as proposed does not seem to allow the flexibility for more detailed site-specific analyses.

Section 50.3. appears to mandate cutoff trenches or walls. Such features are not required on certain dam types, particularly geomembrane-faced rockfill dams as are typical of fully lined tailings storage facilities. We proposed adding "When employed," before "cutoff trenches."

Section 50.5.b prescribes ½" to ¾" maximum size for underdrain drain rock for use with pipes. Coarser material can function well in certain installations, as well as being more readily obtainable by screening from local soils, and we suggest that material gradation should ideally be left to the Engineer of Record rather than prescribed in Rule.

Section 50.8.a. now requires outlet conduits be encased on all sides with concrete. The current rule only requires that of metal conduits. It is uncertain whether the Department intends this change.

Section 50.11., on release capacity, seemingly allows no provision for storage (retention) of the inflow design flood (IDF), and 50.11.c. disallows all but open channel spillways for discharge of the IDF. Rerouting of incoming streams coupled with storage, rather than release, of a large IDF such as the probable maximum flood, is a common and successful approach in the design and operation of tailings storage facilities, and one which prevents inadvertent discharge of process water. This configuration should be allowed with proper justification, much as section 60.1.b allows waiving spillway requirements for off-channel reservoirs, rather than precluded outright as 50.11 appears to do.

In 60.1.a., we suggest adding "at the onset of inflow" to clarify the intended analysis.

While possibly an oversight, it appears that Section 65.1 has removed authority for the Department to waive certain sections of the rule (i.e., Rule 50) which had previously been listed, by only now listing 35, 45, or 60. As many tailings impoundments will also be regulated under Rule 03.06, owing to their storage of water, it is vital that the Rule allow the Department to waive any section of 03.06 that would be inapplicable or inappropriate for a given facility.

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.

Kindest Regards,

Benjamin Davenport
Executive Vice President
Idaho Mining Association