



P.O. Box 1660 • Boise, ID 83701
208.342.0031 • mineidaho.com

November 2, 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
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.

As expressed throughout the rulemaking process, IMA appreciates the Idaho Department of Water Resources (IDWR) application of the Zero Based Rulemaking efforts outlined by Governor Little in E.O.'s 2020-01 and 2019-02. Regarding the E.O.s referenced, it is not clear on whether a few of the proposed changes are consistent with the spirit of the orders with respect to efficiency and redundancy.

For example, the proposed addition to the Definition of Dam in Section 10.9 of 37.03.06 and the inclusion of the IDAPA 37.03.06.3 regarding Administrative Appeals both appear to simply codify what is already afforded in State statute under Title 42, Chapter 17 and Title 67, Chapter 52. Adding new language to the dam safety rules simply declaring what protections are in place seems to conflict with EO 2019-02's admonition that all Idaho administrative rulemaking shall be anchored in simplification and elimination whenever possible. A similar efficiency review of the remaining changes to the dam safety regulatory in this rulemaking should be conducted by IDWR to eliminate further redundancies between rule and statute.

As stated at the public hearing held on 10/28/22, IMA would like to clarify that our comments regarding section 50.1.d.iii re: seismic stability were not intended to imply that IDWR ignore a dam site geologic report. We do however still believe that as written, the proposed language unnecessarily combines the content of what are typically two separate reports by two separate and distinct consultants. A suggested fix that IMA feels would be consistent with IDWR's response that "the design engineer may combine report(s)..." would be to revise the rule language as follows: "The design analyses for large and high hazard dams shall include a report or reports covering geology, geologic hazards, and seismicity. The report(s) shall identify the location of faults, evaluate landslide potential and include a history of seismicity."

Regarding IDWR's comment response #45, part (iii) we note IMA does not "presume...lower" seismic loads will result from a site-specific analysis, only that such an analysis would be an improvement over large-scale regional maps, regardless of the outcome being higher or lower seismic load.

Thank you for your consideration of these comments, we look forward to viewing the final pending rule before the legislature.

Kindest Regards,

A handwritten signature in blue ink, appearing to read "B. Davenport", with a large, sweeping flourish at the end.

Benjamin Davenport
Executive Vice President
Idaho Mining Association