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Submitted electronically via SEC.gov

The Honorable Chair Gary Gensler
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File No. S7-10-22; Public Comment, The Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Chair Gensler:

California Resources Corporation ("CRC") appreciates the opportunity to comment on the U.S. Securities and Exchange Commission's (the "SEC" or the "Commission") proposed rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (the "Proposed Rule").

CRC is an independent oil and natural gas company committed to energy transition in the sector. Located in California, our portfolio of opportunities are located in the California oil and gas basins of San Joaquin, Los Angeles, and Sacramento. CRC has some of the lowest carbon intensity production in the United States and is focused on land, mineral, and technical resources for decarbonization by developing carbon capture and storage ("CCS") and other emissions reducing projects. This includes our Carbon TerraVault CCS and our CalCapture CCS+ projects, which focus on permanent geologic storage of CO_2. We are committed to mitigating potential climate-change impacts, as evidenced by our goal of net-zero greenhouse gas ("GHG") emissions for our Scope 1, Scope 2 and Scope 3 GHG emissions by 2045. We have also set Sustainability Goals for Methane and Water that demonstrate our long-term commitment to sustainable in-state energy production that meets the needs of California's growing population. CRC aims to reduce methane emissions by 30%, as compared to our 2020 baseline. Furthermore, by 2025 we aim to reduce the volume of freshwater used in our low carbon intensity oil and gas operations by 30% from our 2022 baseline.

As a company committed to the energy transition, CRC supports the SEC's overall goal to provide consistent, comparable, and reliable decision-useful information to investors through disclosures about climate-related risks and metrics. However, CRC has identified certain requirements of the Proposed Rule that are duplicative of existing state and federal requirements. These requirements, moreover, are to be implemented on a short timeline that is impractical for most, if not all, registrants. The Proposed Rule also risks subjecting registrants to unwarranted litigation claims in exchange for providing little value to investors. Our comments, therefore, focus on key aspects of the Proposed Rule and are based on the overarching intent to support a workable approach to disclosure. CRC's goal is to augment the Proposed Rule by reducing the potential for data inconsistencies and inaccuracies and ensuring the requisite protections from unwarranted litigation claims for registrants. Specifically, CRC believes the final version of the Proposed Rule should:

1. Deem all disclosures made pursuant to any final rule to be "furnished" and not "filed" with the SEC;
2. Align reporting timelines and methods for calculating Scope 1, Scope 2, and Scope 3 GHG emissions with the reporting deadlines and calculation methodology of the U.S. Environmental Protection Agency's ("EPA") Mandatory GHG Reporting Rule or California Air Resources Board ("CARB") Mandatory Greenhouse Gas Reporting Rule;
3. Provide a more robust safe harbor applicable not just to Scope 3 GHG emissions but also to Scope 1 and Scope 2 GHG emissions; and
4. Remove disclosure requirements under proposed amendments to Regulation S-X and instead require disclosure of climate-related financial risks in the Management Discussion & Analysis ("MD&A") Section of the 10-K, consistent with the Commission's 2010 guidance and subject to traditional materiality principles.

Proposed Amendments to Regulation S-K

1. All Disclosure Requirements Should Be "Furnished" Rather Than "Filed"

Under the Proposed Rule, absent a few exceptions, all disclosures will be treated as "filed" rather than "furnished" and thus subject to potential liability under Exchange Act Section 18 and, to the extent included in a Registration Statement, subject to Sections 11 and 12 of the Securities Act of 1933.[1]

The Commission explains in its preamble to the Proposed Rule that the treatment of climate-related disclosures as filed could lead to more accurate and reliable disclosures, with the issue of evolving methodologies underlying climate data resolved by an "ample" transition period.[2] However, this explanation fails to truly account for the inherent assumptions, uncertainty, and variability in compiling climate-related disclosures discussed throughout this comment letter. The Proposed Rule states the Commission believes increased risk of liability under the securities laws will provide a guardrail to ensure that disclosure obligations are thoughtfully assessed and properly vetted.[3] However, existing duties of good faith and loyalty applicable to officers and directors ensure adequate controls are in place for the disclosure of climate-related risks. When coupled with the inherent subjective nature of assessing climate-related risks, it is unreasonable to expose

[1] The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334, 21,411 (Apr. 11, 2022) (to be codified at 17 C.F.R. pts. 210, 229, 232, 239, and 249).
[2] *Id.*
[3] *Id.*

registrants to litigation claims that will not necessarily provide investors with relevant quality data to inform their decision-making.

CRC encourages the Commission to treat all climate-related disclosures required under any final rule as furnished rather than filed. This treatment is more appropriate for the variability and uncertainty of such disclosures. Treating inherently uncertain climate-related disclosures as filed not furnished may give rise to baseless lawsuits because of the inexact information used to prepare such disclosures. To ensure investors are adequately protected, the Commission need look no further than the general anti-fraud liability of Exchange Act Section 10(b) and Rule 10b-5, which climate-related disclosures will be subject to under existing law. This provides the necessary level of investor protection. The heightened liability of Sections 11 and 12 of the Securities Act of 1933 in particular, resulting from treating such disclosures as filed and where plaintiffs are *not* required to prove scienter or negligence, is too high a level of liability for information related to a rapidly evolving and changing area such as climate-risks.

2. The Commission Should Align Reporting Timelines and Methodologies for Scope 1, Scope 2, and Scope 3 GHG Emissions with Existing State and Federal GHG Emissions Reporting Regimes, Reduce the Burden to Issuers, and Ensure Accuracy in Reporting

Under the Proposed Rule, a registrant is required to disclose its Scope 1 GHG emissions (*i.e.*, direct emissions from operations that it owns or operates), its Scope 2 GHG emissions (*i.e.*, indirect emissions from the generation of purchased or acquired electricity, steam, heat, or cooling), and its Scope 3 GHG emissions (*i.e.*, all other indirect emissions in the registrant's value chain). For Scope 1 and Scope 2 GHG emissions, a registrant must disclose both disaggregated GHG emissions by each constituent greenhouse gas,[4] and in the aggregate (expressed in CO_2e).[5] These emissions are to be calculated from all sources in the registrant's organizational and operational boundaries, but need not include emissions from investments not consolidated or proportionately consolidated, or that do not qualify for the equity method of accounting in the registrant's consolidated financial statements.[6] A registrant need only disclose Scope 3 GHG emissions if "material" or if included in a GHG emissions reduction target or goal.[7] The Proposed Rule provides guidance to "oil and gas product manufactures" by stating that their Scope 3 emissions are likely to be material and will, therefore, need to be reported.[8] In disclosing, a registrant is required to identify the categories of upstream or downstream activities included in the Scope 3 GHG emissions calculation.[9] The Commission's current timeline for the reporting of Scope 2, and, where applicable, Scope 3 GHG emissions, tracks the filing of a registrant's 10-K.

[4] Carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), nitrogen trifluoride (NF_3), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6).
[5] Proposed 17 C.F.R. § 229.1504(a)(1).
[6] *Id.* § 229.1504(b)
[7] *Id.* § 229.1504(c).
[8] 87 Fed. Reg. at 21,378-79.
[9] Proposed 17 C.F.R. § 229.1504(c)(1).

The Proposed Rule provides little in the way of concrete guidance as to the disclosure of Scope 1, Scope 2, and Scope 3 GHG emissions. Moreover, for Scope 1 and Scope 2 GHG emissions, the Proposed Rule does not incorporate a materiality threshold and, for Scope 3 GHG emissions, fails to provide a workable definition of materiality.

Existing Federal and State Reporting Requirements

Many registrants, including CRC, are subject to the U.S. EPA's Mandatory GHG Reporting Rule ("GHGRP"). This requires approximately 7,600 facilities—large GHG emissions sources, fuel and industrial gas suppliers, and CO_2 injection sites—to calculate and report GHG data and other information if the facility produces more than 25,000 metric tons of carbon dioxide equivalent ("CO_2e") per year.[10] Annual reports from these facilities, which cover their emissions from the prior calendar year, are due to the EPA by March 31 of each year to allow time for verification. CRC, like some other registrants, is also subject to CARB's Mandatory Greenhouse Gas Emissions Reporting Rule ("MRR"). CARB is the state agency responsible for protecting the public health from the harmful effects of air pollution and helps lead California's efforts to address global climate change. CARB's MRR requires the reporting of GHG emissions from major sources, including electricity generators, industrial facilities, fuel suppliers, and electricity importers.[11] Facilities and suppliers are subject to two main deadlines under this rule—a reporting deadline and a verification deadline. Entities with emissions greater than 10,000 metric tons of CO_2e must report emissions of carbon dioxide, methane, and nitrous oxide under the MRR. The MRR reporting deadline falls in April of each year. Final verification statements for all reports is then due by August of the following year.

The Commission Should Align its GHG Emissions Reporting Methodology with Existing Requirements

CRC recognizes the value of emissions data and supports the Commission's aim to require disclosure of such data. However, the lack of a prescribed methodology and concrete guidance from the Commission presents difficult obstacles for registrants to overcome in order to comply with the Proposed Rule. CRC believes that the Proposed Rule does not appropriately leverage existing GHG reporting requirements, which are well known to many registrants and investors. Allowing registrants to use GHG emissions data submitted in compliance with existing reporting requirements will ensure a consistent approach that can be quickly implemented.

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[10] *Learn About the Greenhouse Gas Reporting Program (GHGRP)*, EPA, https://www.epa.gov/ghgreporting/learn-about-greenhouse-gas-reporting-program-ghgrp (last visited May 10, 2022).

[11] *About, Mandatory Greenhouse Gas Emissions Reporting*, CARB, https://ww2.arb.ca.gov/our-work/programs/mandatory-greenhouse-gas-emissions-reporting/about (last visited May 10, 2020). Certain sources of GHG emissions are not reported under the MRR, including agricultural emissions, select fugitive emissions, emissions from landfills and composting, and high global warming potential gases. *See Mandatory Greenhouse Gas Reporting 2020 Emissions Year Frequently Asked Questions*, CARB, https://www.arb.ca.gov/cc/reporting/ghg-rep/reported-data/2020mrrfaqs.pdf?_ga=2.50293030.1808166160.1655393272-2023164047.1655393272 (Nov. 4, 2021).

As noted previously, there is an absence of materiality qualifiers applicable to the disclosure of Scope 1 and Scope 2 GHG emissions and, for Scope 3 GHG emissions, the materiality qualifier is ill-defined and somewhat esoteric. Gross emissions data should not be overemphasized, and the GHGRP and MRR have well-defined and understood reporting thresholds. The ambiguous nature of the Proposed Rule, alongside the all-encompassing nature of the emissions disclosures required without clear materiality standards, raises the concern that "insistence on its disclosure may accomplish more harm than good."[12] The solution to prevent this outcome as applied to the Proposed Rule's GHG emissions disclosure requirements is to allow registrants who are subject to the GHGRP or MRR to report GHG emissions in their SEC filings in a manner consistent with those programs.

For example, with respect to Scope 1 GHG emissions, the Commission could deem the EPA's GHGRP Rule or CARB's MRR emission reporting threshold as one method of determining materiality of Scope 1 GHG emissions. The Commission could then allow registrants to aggregate facility-level reports for all facilities under its operational control and report this to the SEC in order to comply with the Proposed Rule's requirements while easing potential burdens of managing different emissions reporting regimes. This approach would also align with how many entities currently voluntarily report their Scope 1 GHG emissions and would be familiar to investors focused on climate-related risks.

Align Reporting Verification Requirements and Deadlines with Existing Requirements

CRC also recommends that the Commission (1) allow the use of data reported under the GHGRP and MRR to satisfy the attestation requirements of the Proposed Rule and (2) revise its current reporting deadline to align with the deadlines of the EPA GHGRP or CARB MRR. The GHGRP and MRR already incorporate verification requirements, and the SEC should leverage the tools established by the EPA and CARB programs. This will ensure accurate and timely reporting of emissions without the addition of unnecessary burdens and vague requirements for attestation contained in the Proposed Rule.

If the Commission chooses to maintain its requirements for additional information beyond what registrants currently report under the EPA GHGRP or CARB MRR, alongside the attestation report requirements (and the qualifications of the GHG emissions attestation provider), CRC nevertheless still recommends instituting a deadline for the Commission's required disclosures that is consistent with the reporting deadline of the GHGRP/MRR. As written, the Proposed Rule undermines the Commission's goal of providing consistent, comparable, and reliable decision-useful information because it prioritizes speed in reporting over accuracy. EPA and CARB have rightfully recognized that accurately reporting annual emissions should not be rushed and enshrined adequate time for quality assurance and verification requirements in their own rules. By aligning the reporting deadline in this way, registrants can utilize the information they have

[12] *TSC Indus. Inc. v. Northway, Inc.*, 426 U.S. 438, 448 (1976).

available as a result of compliance with pre-existing regulations to produce consistent, verified data.

3. The Commission Should Provide a More Robust Safe Harbor Applicable to All GHG Emissions (Scope 1, Scope 2, and Scope 3)

The Commission proposes to incorporate a limited safe harbor from liability for the disclosure of Scope 3 GHG emissions. The safe harbor provides that a registrant's disclosure will not be deemed a fraudulent statement "unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith."[13]

Although helpful and a good starting point, a more robust safe harbor is required. As presently written, the safe harbor is limited to Scope 3 GHG emissions and subject to undefined conditions of "reasonableness" and "good faith" standards. The lack of definitive standards included in the Proposed Rule could have significant litigation costs and liability consequences for a registrant when collecting climate data from others in its value chain. Registrants are afforded no degree of certainty as to when the safe harbor would apply to their disclosures. This is particularly apparent when both "reasonableness" and "good faith" are subjective in nature and often represent different concepts to different individuals. Indeed, it is unclear what the Commission itself considers to be "reasonable" or "good faith." Furthermore, the safe harbor's limited applicability to Scope 3 GHG emissions is overly narrow, especially for disclosures in such an unsettled area. Moreover, a registrant's disclosure of its Scope 1 and Scope 2 GHG emissions are not subject to any safe harbor or other protections at all. This means that, as a result of the Commission's fast-tracked reporting and minimum time for verification, registrants are left exposed to unwarranted litigation claims and potential legal liability.

CRC recommends the Commission bolster the existing safe harbor protections by expanding its scope to protect both Scope 1 and Scope 2 GHG emissions reporting and by clarifying the terms "reasonableness" and "good faith." Clarifying the definitions of these two conditions not only allows registrants a greater degree of certainty as to when the safe harbor would apply but also provides clearer guidance to aid the collection of the requisite data from others in the value chain. Intelligible, transparent standards ensure that all involved in the provision of this data understand the expectations of the rule, helping to prevent the delivery of inaccurate information to investors. By expanding the safe harbor to the disclosure of Scope 1 and Scope 2 GHG emissions, the Commission will be providing additional protection to account for the current compressed timeline which is likely to result in rushed reporting by registrants. Finally, a more robust safe harbor is needed as applied to Scope 3 GHG emissions. Notwithstanding the practical difficulties in collecting the data required to calculate Scope 3 GHG emissions, the inherent uncertainties of such calculations support the need for additional protections. CRC posits that, in accord with our other recommendations, all disclosures, but particularly GHG emissions, should be deemed furnished not filed (see above).

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[13] Proposed 17 C.F.R. § 229.1504(f)(1).

4. The Proposed Amendments to Regulation S-X Should Be Replaced with Climate-Related Financial Metrics Consistent with Traditional Materiality Principles

Pursuant to proposed Article 14 to Regulation S-X, the Commission would require the inclusion of certain climate-related financial statement metrics and related disclosure in a note to a registrant's audited financial statements. Such disclosures would fall under three categories: financial impact metrics; expenditure metrics; and financial estimates and assumptions. The financial impact metric disclosures would require a registrant to disclose the financial impacts of severe weather events,[14] other natural conditions,[15] transition activities,[16] and identified climate-related risks[17] on its consolidated financial statements *unless* the aggregated impact of these events, activities, and risks is less than 1% of the total line item for the relevant fiscal year.[18]

As noted previously, CRC agrees with the Commission's overall intent to provide consistent, comparable, and reliable decision-useful information to investors. Fundamentally, such information is that which realistically informs investors, providing a true, accurate, and complete picture. However, the requested financial disclosures do not accomplish this because they risk overloading investors with information that is unlikely to meaningfully inform decision-making. This is only further exacerbated by the unprecedently low 1% threshold for such disclosures.

In order to comply with the Proposed Rule in its current form, a registrant will be required to quickly implement internal controls to calculate financial impacts of ill-defined events, activities, and risks, and track whether each line item meets the 1% threshold for disclosure. However, the Proposed Rule fails to account for the practical difficulties this imposes as well as the inherently uncertain and variable nature of climate-related disclosures which are, at this stage, based on numerous assumptions. At a fundamental level, the financial climate-related data the Commission seeks is infeasible for registrants to produce without making a number of estimates and a number of subjective determinations.

The Commission's proposed requirement that such financial climate-related data also be disclosed for the historical fiscal years included in the filing only compounds this problem. The Proposed Rule represents a significant sea change in financial reporting practices, and new processes and controls will have to be put in place to assess and identify relevant data. This will be a daunting task in and of itself, but being required to retroactively apply this requirement to historical financial data with the degree of accuracy that investors expect with respect to financial reporting is unfeasible.

Moreover, the 1% threshold for reporting costs on climate change for each income statement line item is unprecedently low. This is perhaps best illustrated by the Commission's Staff Accounting Bulletin ("SAB") No. 99, which notes the development of guiding principles to

[14] *Id.* § 210.14-02(c).
[15] *Id.*
[16] *Id.* § 210.14-02(d)
[17] *Id.* § 210.14-02(i).
[18] *Id.* § 210.14-02(b)(1).

determine quantitative thresholds to assist registrants in preparing their financial statements.[19] Staff endorsed registrants use a 5% threshold of materiality, at least as a preliminary step in determining materiality.[20] Moreover, registrants are able to consider qualitative factors too in determining materiality, an approach encouraged by the Commission to view the "total mix" of information. The proposed 1% threshold will almost always be below the current audit thresholds for materiality, which will likely distort investor perceptions when comparing climate-related financial disclosures with other required financial disclosures. Primarily, the Proposed Rule fails to make clear how a registrant should separate its expenditures and attribute a specific portion to climate-related impacts when, as often is the case, there are several factors affecting any given line item. For example, if a registrant's insurance costs increase, it will be very difficult to attribute this increase, or a portion of the increase, to the results of climate-related risks. Transition costs will be especially problematic given that many such costs are not, or cannot be, quantifiable in nature. Compliance with this requirement, therefore, will entail significantly more work for registrants to make such determinations, especially without clear guiding parameters. Notwithstanding this, in order to comply with the Proposed Rule's requirements as applicable to prior periods, a registrant will need to go back, tag, and categorize its expenditures for past (reported) fiscal years. This will also be difficult and, in many cases, it is likely that the data to accurately capture this information will no longer exist. The above presupposes that a registrant will be disclosing such information, but the same is also true for registrants falling below the 1% threshold. A registrant will still have to engage in data collection and the subsequent calculations to determine that it is below the threshold for materiality and will also have to "show their work" to demonstrate to the Commission that disclosure is unnecessary. This is an unduly burdensome requirement of the Proposed Rule unlikely to provide information that is material to investor decision-making, and accordingly is arbitrary and capricious.

The Proposed Rule also departs from the Commission's designation of, and reliance on, the Financial Accounting Standards Board ("FASB") as the standard-setter for Generally Accepted Accounting Principles ("GAAP") financial statements (which include footnote disclosures). Several decades ago, the Commission delegated day-to-day responsibility for setting the form and content of registrants' financial statements to an independent private sector body. The SEC formally recognized FASB as the authoritative GAAP standard-setter at the time of FASB's formation in 1973, which the Commission reaffirmed after enactment of the Sarbanes-Oxley Act, in accordance with Section 108 of that Act. FASB has developed a robust and comprehensive set of due process procedures for all standard setting. As a result, FASB's standard-setting practice proceeds at a deliberate pace over time, typically involving multiple rounds of exposure drafts to incorporate each stakeholder's perspective. In this way, FASB carefully achieves a balanced result that incorporates the varying perspectives of financial statement users and preparers, investors, auditors, and regulators, including the Commission. We urge the Commission not to adopt the

[19] Staff Accounting Bulletin No. 99 (Aug. 12, 1999).
[20] *Id.*

financial reporting component of the Proposed Rule in favor of returning responsibility for accounting standard setting to FASB.

CRC recommends that the Commission remove the financial reporting requirements under its proposed amendments to Regulation S-X and instead allow a registrant to provide disclosures regarding climate-related financial risks in the MD&A Section of Form 10-K, consistent with the Commission's 2010 guidance. Registrants can then determine what information should be incorporated utilizing traditional principles of materiality that better capture the concept of materiality. Under this approach, investors can still be provided with additional information regarding a registrant's climate risks, but in a manner that is consistent with the overall objective of MD&A as set forth in existing Regulation S-K Item 303(a)—"[T]o provide material information relevant to an assessment of the financial condition and results of operations of the registrant including an evaluation of the amounts and certainty of cash flows from operations and from outside sources."

CRC appreciates the opportunity to comment on the Proposed Rule. We thank the Commission for its consideration and look forward to continued dialogue.

Respectfully submitted,

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