ALLIANCE RESOURCE PARTNERS, L.P.

June 17, 2022

Submitted via email (rule-comments@sec.gov)

Mr. Gary Gensler
Chair
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Release Nos. 33-11042; 34-94478; File No. S7-10-22 – Proposed Rules on the Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Mr. Gensler:

Alliance Resource Partners, L.P. ("ARLP" or the "Partnership") hereby submits these comments on the *Enhancement and Standardization of Climate-Related Disclosures for Investors* proposal issued by the Securities and Exchange Commission (the "SEC" or "Commission") (the "Proposed Rules"). The Proposed Rules would require registrants to (1) disclose oversight of climate-risks by management and the board of directors, (2) disclose climate-related risks and the actual or reasonably likely material impacts on their business, strategy and outlook, (3) disclose their greenhouse gas ("GHG") emissions in a separately captioned section of their registration statements and annual reports which would be subject to attestation requirements, and (4) include footnote disclosures about climate-related impacts within their audited financial statements.

Initially, we note the subject matter of the Proposed Rules is extremely complex and subjective, and the information requested would not in any way assist an investor's decision. Rather than providing significant new information for investors, the disclosures that would be required by the Proposed Rules are likely to be more confusing than enlightening, while imposing significant new workloads and costs on registrants. In addition, we believe that the Proposed Rules would have the effect of discouraging investment in fossil fuels; the underinvestment of which has contributed significantly to the current energy crisis for which President Biden is publicly seeking solutions. Withdrawing the Proposed Rules would be a concrete step to address the energy crisis. At a minimum the Commission should suspend consideration of the Proposed Rules until the supply/demand balance in the energy markets returns to normal.

Further, we would like to highlight our concurrence with other commenters who have shown the Proposed Rules are neither necessary nor appropriate for multiple reasons, including Commissioner Peirce in her March 21, 2022 statement[1], the Energy Infrastructure Council, the National Mining Association, Pickering Energy Partners, and Lawrence A. Cunningham as corresponding author for a group of law and finance professors. We also note that if the Commission desires to regulate voluntary climate-related disclosures by public registrants, it can do so by requiring voluntary disclosures to conform to the Task Force on

[1] "We are Not the Securities and Environment Commission – At Least Not Yet" – Commissioner Hester M. Peirce, March 21, 2022, https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321

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Climate-related Financial Disclosure ("TCFD") framework and the GHG Protocol. However, requiring GHG disclosures within Securities and Exchange Act filings should not be required. Further,

While we believe the Proposed Rules should be withdrawn entirely, and respectfully request the Commission to do so, there are a number of specific concerns that we explain in greater detail below. Among other things, we believe the Proposed Rules (1) remove the deliberative process from the board of directors and management, (2) require an unrealistic and unnecessary level of granularity in disclosures, (3) elevate climate-related risks above all other risks, (4) require disclosure of information that the registrant has no control over and cannot verify, and (5) require disclosure of information without respect to materiality in the financial statements that is not meaningful.

1. **Proposed Item 1501 – Governance**

The Proposed Rules indirectly dictate how the board of directors and management should manage the business of the registrant by requiring disclosures specifically about how they consider climate-related risks as part of strategy, risk management and oversight, and how the registrant sets targets or goals and monitors progress. The Proposed Rules also would require the specific naming of board or committee members in charge of climate-related risks, disclosure of whether any member has climate-related expertise, and if so, the nature of that expertise. These requirements would elevate one of many issues businesses deal with to a level above all others, which has the effect of the Commission, rather than stakeholders, determining what is most important to the registrant's business. We recommend the Commission remove these requirements, and allow the board and management to continue to determine whether such disclosures would provide meaningful information to investors.

2. **Proposed Item 1502 – Strategy**

The Commission's guidance issued in 2010[2] (the "2010 Guidance") requires all registrants to disclose climate-related risks if they are reasonably likely to have a material impact on the registrant's business or consolidated financial statements. The Proposed Rules would go much further, requiring the assessment of materiality over short-, medium- and long-term timeframes (without defining those timeframes), and requiring the categorization of the risk as a physical or transition risk and, if physical, as either acute or chronic. The Proposed Rules also would require information about the location and nature of properties, processes or operations subject to physical climate-related risks. This additional level of location information called for in the Proposed Rules is at a zip code or equivalent level. This level of disclosure not only takes the discussion of climate-related risks to a level of granularity that may improperly convey the risk to investors, but would also have the effect of elevating climate-related risks above other risks disclosed by the registrant. We believe the location information requirements are at a level far more detailed than called for under any other existing SEC or Financial Accounting Standards Board rule or generally accepted accounting principles ("GAAP") with respect to segments, which require discussion of operations at the level assessed by the chief operating decision maker ("CODM") to make resource allocation decisions[3]. If the reportable segment level is sufficient for a CODM to allocate resources it is surely adequate to provide investors reasonable information to make informed investment decisions. Further, given the size and number of our operations, which span several zip codes, disclosures about properties, processes or operations at the zip code level would be much more burdensome and would not provide more benefit to investors than providing the same information at an operational or segment level. We recommend the Commission retain its existing 2010

[2] Commission Guidance Regarding Disclosure Related to Climate Change, 75 Fed. Reg. 6290 (Feb. 8, 2010)

[3] Item 101(c) *Narrative description of business* and Accounting Standards Codification ("ASC") 280 *Segment Reporting*

Guidance, and remove the additional granular disclosure called for under the Proposed Rules to avoid investor confusion or misinterpretation of the magnitude of the related risk.

3. Proposed Item 1503 – Risk Management

The Proposed Rules would expand the requirements for disclosure of climate-related risks to include the processes used to identify, assess and manage the risks and how those processes are integrated into a registrant's overall risk management system. The Proposed Rules would require disclosures about how a registrant determines (1) the relative significance of the risks, (2) consideration of regulations or policies in their identification, (3) consideration of shifts in customer or counterparty preferences, technology changes or market price changes in the assessment and (4) the materiality of the risks. The Proposed Rules would also require disclosures about how management (1) determines whether to mitigate, adapt or accept the risk, (2) prioritizes whether to address the risk, and (3) determines how to mitigate the risk. We believe these enhanced disclosures would elevate climate-related risks to a higher level than other myriad ongoing business risks of a registrant, and could cause investors to give too much importance to climate-related risks and misinterpret the potential materiality of such risks as compared to all other business risks. We also feel that the requirement for public disclosure of management's deliberative process and insights would likely require the disclosure of confidential business information and proprietary information, as it relates to customers, counterparties, technologies and market prices, and increase a registrant's exposure to unwarranted litigation. We believe the risk management disclosures called for under the Proposed Rules should not be adopted as proposed.

4. Proposed Items 1504 & 1505 – GHG Emissions

The Proposed Rules would have registrants disclose their Scope 1 and 2 GHG emissions and, if material or included as part of a registrant's emissions reduction target, Scope 3 GHG emissions. The Proposed Rules would require further that the Scope 1 and 2 emissions disclosed be subject to attestation by an independent third-party. Our concerns with these proposed disclosures include the following:

1. Many registrants already provide Scope 1 emission disclosures to the Environmental Protection Agency ("EPA"), the agency responsible for regulating GHG emissions, through its Mandatory Greenhouse Gas Reporting Program ("MGHGRP"). Under the MGHGRP, only Scope 1 emissions are required to be reported and what is reported is not subject to an attestation report. We believe that if the reporting of Scope 1 emissions is sufficient for the EPA, which is responsible for monitoring and regulation of GHG emissions, reporting of Scope 1 emissions certainly is adequate for investors to make informed decisions about a registrant.
2. These disclosures should use the same protocol used by the EPA to avoid potential discrepancies between what is reported to the agency with regulatory authority over GHG emissions and what is reported to investors and the Commission[4]. We believe it is important that information publicly shared with investors should be the same information reported to the EPA. We further note that Scope 1 emissions can be accessed without the need to separately report this information to the Commission.
3. Scope 2 and 3 emissions disclosures would be based on third party information that is not under the control of the registrant and gathering the required information to report these emissions would be dependent on the internal controls and processes of third-parties. As

[4] The EPA provides flexibility to reporters on which method to use to report GHG emissions and these methods can be changed from year to year. Therefore, the Commission could propose rules requiring registrants to report under the TCFD framework GHG Protocol and still align the reporting with that under the MGHGRP.

a result, the registrant would ultimately be in a position of being required to disclose information without the ability to verify or obtain assurance on that information. Additionally, if the registrant were to report Scope 2 and 3 emissions using approximations such as emission factors at generation for the calculation of Scope 2 results, these emissions may not match the Scope 1 emissions reported by the third parties that generate those emissions, thereby creating inconsistencies and a lack of comparability between reporting entities. Further, as a result of not being able to verify or obtain assurance on Scope 2 and 3 emissions, there is an increased risk of potential claims from investors due to the inability to ensure the accuracy of the data.

As previously stated, we believe that GHG emissions disclosures should be made voluntarily by registrants outside of Securities and Exchange Act filings and should be consistent with Scope 1 emissions reported to the EPA. Therefore, these disclosure provisions should not be adopted as proposed.

5. Proposed Article 14-01 and Article 14-02

The Proposed Rules would require disclosure of certain financial statement metrics, expenditure metrics, and financial estimates and assumptions in a footnote to the registrant's audited financial statements included in Securities and Exchange Act filings with the Commission. We believe that any material financial impact to a registrant is already required to be disclosed under GAAP. The Staff's reasoning for the inclusion of a separate footnote is that (1) registrants would benefit from the specification on when to provide the disclosure and (2) the prescription of accounting principles around these climate-related disclosures would provide consistency and comparability. We do not believe that the Proposed Rules would accomplish either of these stated goals.

We believe that the Proposed Rules would result in less information provided to the users of financial statements than current guidance and create a significant burden to preparers as discussed below. We believe that the metrics proposed would provide no detail as to the underlying cause for the negative or positive impact from climate-related events or transition activities. The amount disclosed for each line item could be comprised of a number of smaller events that aggregate to an amount requiring disclosure under the Proposed Rules and would not identify which climate-related risks may have driven the amounts disclosed. Existing guidance requires a discussion of the event that caused any impairments, contingencies, or risks and uncertainties, the specific assets affected, and the methodology and assumptions used in any determination of the fair value related to these events, providing useful information to the reader of the financial statements[5]. This guidance would include any impairment, contingency risk or uncertainty related to climate-related events.

We also believe the materiality threshold of 1% of an individual line item is significantly lower than other thresholds in Regulation S-X[6] implying that this information is more sensitive than any other measure of financial performance in the financial statements. Since the amount in which to apply this threshold is based on an aggregate number on an absolute basis, processes and controls will need to be in place to capture all transactions to have a complete population to analyze for disclosure, creating a significant burden to preparers. Given that the materiality threshold is measured on an absolute value basis, registrants would be required to evaluate every transaction to determine if it arose from a climate-related event in order to properly record the transaction. Such determinations are likely to be subjective

[5] Examples include: ASC 360 *Property, Plant and Equipment*; ASC 350 *Intangibles – Goodwill and Other*; ASC 932 *Extractive Activities – Oil & Gas*; ASC 450 *Contingencies*; ASC 275 *Risks and Uncertainties*

[6] S-X 5-02.3(b), 5-02.8, 5-02.17, 5-02.20, 5-02.24, 1-02(w), 4-08(h)(1), 4-08(h)(2), 4-08(m)(1)(i)-(iii), 4-08(m)(2), 4-08(m)(2)(ii)

in nature, requiring either consultation between various functional areas prior to initially recording the transaction or, alternatively, review of each transaction entered into the registrant's reporting system to ensure all severe weather events have been appropriately captured. In either case, regardless of the process implemented by a registrant, this requirement is likely to create backlogs and delays in the recording and reporting of the relevant financial information required by the Proposed Rules.

The Proposed Rules would require specific disclosure about whether the risks, uncertainties, or known factors associated with climate-related events or transition activities were considered when making estimates and qualitative discussion of how the estimates and assumptions were affected. However, existing accounting principles, which would require this information, if material, for any fair value measurements or range of exposures disclosed in the financial statements, are sufficient on this point. We further believe that the addition of these disclosures would presumably lead preparers to include a statement that climate-related events were not considered if they were not a key assumption in the calculation of an estimate, implying a negative connotation to the reader that they should have been. We believe that such an implication would mislead a reader to believe that the estimate is somehow improperly determined.

The Proposed Rules also do not clearly define what climate-related events are and could be interpreted to mean any weather event. The Proposed Rules certainly suggest that all extreme weather events are caused by carbon emissions. This raises a number of challenges for preparers about how to track and record the information needed to meet the requirements which will create significant costs and burdens for preparers. While not a complete listing, we believe some of the significant costs and burdens include (1) creating positions to track weather events and determine whether they are severe weather events, (2) modify or create systems to capture the costs associated with those weather events determined to be severe, (3) the education of operations personnel of the new requirements to ensure that all events are reported to ensure completeness of any assessment, and (4) the identification, documentation, implementation, and analysis of controls over all these new processes to enable management to certify its controls over financial reporting, and enable its independent registered public accounting firm to attest to the effectiveness of those controls. This also creates diversity in practice on how registrants determine whether a particular weather event is a severe weather event. Extreme temperature is an example. In the southern United States, temperatures routinely exceed 100 degrees Fahrenheit during the summer and could be considered to be normal, whereas on the west coast these temperatures could be considered extreme. In these circumstances, you could have a registrant with operations on the west coast include in its disclosures of negative impacts from climate-related events increased air conditioning costs that a registrant with operations in the south would not include in the same disclosure. There is also the issue of how much of a cost is attributable to a specific climate-related event. For example, if a registrant closes a specific operation because the demand for its product is impacted by both competition due to cost and preference to reduce climate-related impacts, the registrant would need to determine whether to allocate costs between the two factors, not include the costs, or include all the costs in its analysis. This would reduce the comparability between registrants, which is counter to the purpose of the Proposed Rules. Most business decisions and costs are not as binary as the examples herein, illustrating that each registrant will need to make these determinations based on its own facts and circumstances and, as a result, the comparability the Proposed Rules strive to achieve would not be accomplished.

Again, current accounting principles would require that if a climate-related event or transaction had a specific impact on the financial condition or results of operations, a registrant should include this in its description of the nature of the event causing the impact. This assures more meaningful information is provided to the users of the financial statements, and the additional requirements of the Proposed Rules are not needed.

In addition to our concerns discussed above, we believe that if the Proposed Rules are adopted, the costs to registrants will be significant as discussed in the proposal itself[7]. We do not believe that the Commission can conclude that the costs outlined in the Proposed Rule would be outweighed by any purported benefit achieved as we have previously outlined. We further believe that some of the costs may be understated based on optimistic quotes from firms that are incentivized to see the Proposed Rules implemented. Further, costs received from registrants in last year's request for comment likely did not factor in some of our concerns with respect to granularity and materiality we highlighted previously. While some of the concerns we note below are discussed in the Proposed Rules, we highlight some of the reasons we believe the costs will be significant. We believe the costs will exceed the estimates in the Proposed Rules primarily due our belief that sufficient expertise, both internally and externally, required for all registrants to implement the Proposed Rules in the timeframe contemplated is not available.

The Proposed Rules assume that because there are a number of companies that voluntarily make climate-related disclosures outside of their Securities and Exchange Act filings, processes and controls already exist and therefore the implementation of the Proposed Rules will not represent a significant burden to registrants. While controls and processes may exist for those registrants that make voluntary disclosures, they may not be fully documented to the level required for management to make an assessment or the registrant's independent registered public accounting firm to attest to the registrant's internal control over financial reporting. For those registrants that are not currently, making these disclosures, they will need to develop controls and procedures that are subject to management's assessment and attestation by their independent registered public accounting firm. Because the Proposed Rules call for disclosure of non-financial information that preparers are not accustomed to including in filings, registrants will need to develop the appropriate expertise either internally or through the engagement of third parties.

The attestation requirements proposed for both Regulation S-X and S-K will significantly increase administrative costs and audit fees incurred by registrants, given the low materiality thresholds as it relates to the proposed changes to Regulation S-X as well as the new attestation requirements proposed for Regulation S-K. In both cases, there will be increased training time internally as controls over financial reporting are developed, documented and tested for the new requirements, but also for the expertise required to design controls over the information required to be disclosed to a level that the registrant can assert that its internal controls are effective. The new GHG emission disclosures are not financial in nature and new departments or enhancements to existing departments will be needed to develop and appropriately document the process of initiating, authorizing, processing, recording and reporting this information at a level to support an unqualified attestation report.

We have concerns about whether there are sufficient qualified attestation providers to support all large accelerated and accelerated filers to be able to obtain attestation reports, especially in time to meet Exchange Act filing deadlines. This lack of qualified providers also looks to dramatically increase compliance costs for registrants. We believe that the availability of these qualified providers decreases even further once an attestation report is required to be included in a Securities and Exchange Act filing, as we believe many current providers will not want to absorb the increased liability associated with being identified as experts. Because of this decrease in providers, we believe that the costs for services will increase substantially.

In addition to the increased cost previously discussed, we also believe requiring XBRL tagging of information would increase costs and impose time constraints on registrants. Requiring the use of XBRL would be a departure from other areas of Securities and Exchange Act filings outside the financial statements and given the differences in the estimates and assumptions used to calculate Scope 1, 2 and 3 emissions, we believe the use of XBRL for these disclosures would not be meaningful to investors.

[7] Discussed in the Commission's proposal at IV. Economic Analysis, C. Benefits and Costs, 2. Costs.

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We would be pleased to meet in person, or speak by phone, to discuss our comments with the Commission or its staff at your convenience. Any questions regarding our comments may be directed to Megan J. Cordle at 918-295-7634.

Very truly yours,

Megan J. Cordle

Megan J. Cordle
Vice President, Controller and Chief Accounting Officer
Alliance Resource Partners, L.P.

cc: Brian L. Cantrell, Chief Financial Officer
R. Eberley Davis, General Counsel and Secretary