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Submitted electronically via SEC.gov

Secretary Vanessa A. Countryman  
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 Secretary Countryman:

Natural Resource Partners, L.P., (“NRP” or the “Company”) 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”).

NRP is a diversified natural resource company headquartered in Houston, Texas. We have 52 employees and minimal operations, with revenue substantially derived from royalty payments paid pursuant to the leasing of our resources and distributions from our non-controlling interest in a soda ash business controlled and operated by an unaffiliated third party. NRP does not mine, drill, or produce minerals, nor do we operate any facilities. Rather, we lease our acreage to companies engaged in the extraction of minerals in exchange for royalty payments and various other fees.

We write to explain aspects of the Proposed Rule that would be unworkable for NRP. More specifically, we want to stress the importance of including an exemption from Scope 3 greenhouse gas (“GHG”) emissions reporting requirements for passive income/royalty companies who do not have the ability to produce reliable Scope 3 data. This narrow exemption will likely only apply to a small subset of public companies, and therefore will not hinder the Commission’s larger efforts to require Scope 3 disclosures, should the Commission wish to continue to pursue its proposed approach of requiring Scope 3 disclosures. At the same time, such an exemption is critical for this subset of passive income/royalty companies. We also urge the Commission to exempt companies from reporting *de minimis* Scope 1 and 2 GHG emissions. **Specifically, we respectfully ask that the Commission:**

- **Provide a *de minimis* threshold applicable to Scope 1 and Scope 2 GHG emissions disclosures for companies whose GHG emissions are not material;**

- **Provide an exemption applicable to Scope 3 GHG emissions disclosures for passive owners/royalty companies, similar to the current exemptions provided pursuant to Regulation S-K Subpart 1300<sup>1</sup>;**
- **Remove the proposed Regulation S-X requirements and instead allow registrants to discuss the climate-related topics in a narrative form under Regulation S-K when such issues are material;**
- **Clarify and limit the definitions of “physical risk” and “other natural conditions”;**
- **Remove, or alternatively, limit, the governance disclosure requirements; and**
- **Allow registrants to adopt an operational control approach to GHG emissions disclosures.**

Although we hope that the Commission reconsiders its decision to issue this rule, at a bare minimum, we ask that the Proposed Rule incorporate GHG disclosure exemptions for passive income/royalty companies and *de minimis* emitters, such as NRP.

## **I. Overview of NRP’s Business**

To provide context for our comments, NRP offers the following overview of its business. The Company owns approximately 13 million acres of mineral interests and other subsurface rights across the United States. However, we do not mine, drill, or produce these minerals, nor do we have the human, technical, or capital resources to do so. As a passive income royalty company, we have no operations. Instead, we lease our acreage to others who extract these resources. We do not market or sell minerals produced from our leases; in fact, all marketing and sales efforts are effected solely by our lessees. Accordingly, NRP does not have any knowledge of the purchases or end uses of resources produced under our leases. Our business is, therefore, somewhat similar to a private landowner (*e.g.*, a farmer or rancher) that receives royalty income from mineral interests leased to operating companies. Our leases, and the resources extracted from them by third-party operators, provide critical inputs for a range of businesses including the manufacturing of steel, electricity, and basic building materials. In exchange, NRP receives royalty payments and various other fees from our lessees, which generate a large part of our revenue. These royalties are typically a percentage of the gross revenue received by our lessees. We also receive distributions from our minority interest in a soda ash business, which is controlled and operated by an unaffiliated third-party.

NRP’s property interests also provide opportunities for carbon sequestration and renewable energy. Although we do not have the human, technical, or capital resources to conduct carbon sequestration or renewable energy operations, we are endeavoring to lease our acreage to companies that do. Currently, NRP holds the legal rights to sequester carbon dioxide underground in approximately 3.5 million acres and also owns the legal rights to generate renewable energy through geothermal energy production in various parts of its asset base. NRP continues to identify alternative revenue sources across its large portfolio of land and mineral assets, to include opportunities such as the sequestration of carbon dioxide underground and in standing forests and

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<sup>1</sup> See 17 C.F.R. Subpart 229.1300, *et seq.*

the generation of electricity using geothermal, solar, and wind energy. To the extent that we are able to lease our property interests for the purpose of carbon sequestration or renewable energy opportunities, our lessee would be responsible for all operations and any revenue generated would be in the form of royalty payments generated under the lease.

While NRP's ownership and leases cover a vast array of resources, our operations are actually quite small: we have 52 people employed by affiliates of our general partner, a 6-person management team, and approximately 35,000 square feet of office space, divided between 2 offices (Houston and West Virginia). We also own a 49% non-operating interest in Sisecam Wyoming, a trona/soda ash operation.<sup>2</sup>

Although we have a number of concerns with how the Proposed Rule will impact a company of our size and with our business model, we have focused our comments to the few key issues set forth more fully below.

## **II. Comments Related to GHG Emissions Reporting**

### ***a. The Commission Should Provide Exemptions for Scope 1 and Scope 2 Reporting Requirements for De Minimis Emitters.***

The goal of disclosures under federal securities law is to provide investors with material information.<sup>3</sup> Indeed, the materiality standard exists to “filter out essentially useless information that a reasonable investor would not consider significant, even as part of a larger ‘mix’ of factors to consider in making his investment decision.”<sup>4</sup> For operations like ours, Scope 1 and Scope 2 GHG emissions<sup>5</sup> will simply never be material: we only have 52 employees divided between two offices. We believe that we generate virtually no Scope 1 GHG emissions and minimal Scope 2 GHG emissions commensurate with an office working environment. Even if our investors care more generally about climate-related issues, the minimal emissions we generate will not be investment-useful information and will not provide meaningful information with respect to the climate-related risks that we face. Moreover, the price of producing this *meaningless* information each year will ultimately be felt by our investors: given our limited staff—none of whom have emissions expertise—we will likely have to hire numerous consultants and incur significant expense to quantify what we believe are insignificant levels of Scope 1 and Scope 2 GHG emissions. We will have to compete with every other public company, many of which are much larger than us, for the limited number of consultants able to perform this work. NRP will have to go through this same exercise each year and complete the work in time to disclose our nominal

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<sup>2</sup> Trona is used in several consumer goods including glass, chemicals, soap, and paper.

<sup>3</sup> *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *accord Basic Inc. v. Levinson*, 485 U.S. 224, 232 (1988).

<sup>4</sup> *Basic Inc.*, 485 U.S. at 234 (citing *TSC Indus.*, 426 U.S. at 448-49).

<sup>5</sup> The Proposed Rule defines “Scope 1” emissions as “direct GHG emissions from operations that are owned or controlled” by a company and “Scope 2” emissions as “indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled” by a company. The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334, 21,374 (Apr. 11, 2022).

emissions in our annual filing, at a time when the staff responsible for our annual filings are already working very hard to meet existing reporting obligations.

The Commission should clarify that Scope 1 and Scope 2 GHG emissions are not “material” if they fall below 25,000 metric tons of CO<sub>2</sub>e/year. EPA does not require facilities to report GHG emissions under its Mandatory GHG Reporting Rule when a facility emits fewer than 25,000 metric tons of CO<sub>2</sub>e/year.<sup>6</sup> EPA is the subject matter expert on GHG emissions, and it is EPA rather than the SEC that has statutory authority from Congress to regulate GHGs under the Clean Air Act.<sup>7</sup> EPA has decided that the GHG emissions from certain facilities should not have to be reported because they fall below this *de minimis* threshold amount and the Commission should follow a similar approach. When EPA finalized the Mandatory GHG Reporting Rule, it conducted an analysis of the costs associated with the rule and considered the effects of requiring facilities with lower GHG emissions to also report their emissions. EPA estimated if it lowered its own *de minimis* reporting threshold from 25,000 to 1,000 metric tons of CO<sub>2</sub>e per year, it would cost an additional \$266 million in 2006 dollars.<sup>8</sup> The SEC should determine, as EPA did, that the additional costs associated with reporting *de minimis* GHG emissions is not justified. The SEC should also clarify that even if a registrant’s emissions are above this *de minimis* threshold of 25,000 metric tons of CO<sub>2</sub>e/year, they may not be material and, therefore, may not require disclosure.

If the Commission does retain Scope 1 and Scope 2 GHG emissions disclosure requirements applicable to *de minimis* emitters and passive income/royalty companies, such as NRP, in the final rule, then it is critical that it also expand the proposed exemptions from attestation requirements to such companies (as it has for Smaller Reporting Companies (“SRCs”)). Finding a qualified attestation provider, particularly on the proposed compliance timeline, will be overly burdensome not just for SRCs but also for passive income/royalty companies because of their limited resources.

***b. The Commission Should Remove the Proposed Rule’s Requirements for Scope 3 GHG Emissions Disclosures.***

Under Item 1504 of the Proposed Rule, the disclosure of Scope 3 GHG emissions will be required when a company has set an emissions target that includes Scope 3 GHG emissions or “if material.”<sup>9</sup> While the Commission has not proposed a specific definition for “material” Scope 3 GHG emissions in the text of the Proposed Rule, the Commission notes that Scope 3 GHG emissions are potentially material if they constitute a “relatively significant portion” of an entity’s total GHG emissions.<sup>10</sup> Respectfully, this is a “proportionality” and not a “materiality” test. And the formulation makes little sense for a non-operating lessor like NRP that lacks the ability to influence this category of emissions.

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<sup>6</sup> 40 C.F.R. § 98.2.

<sup>7</sup> See *Massachusetts v. EPA*, 549 U.S. 497 (2007).

<sup>8</sup> See Mandatory Reporting of Greenhouse Gases, 74 Fed. Reg. 56,260, 56,363, Table VII-2 (Oct. 30, 2009).

<sup>9</sup> See Proposed 17 C.F.R. § 229.1504(c).

<sup>10</sup> 87 Fed. Reg. at 21,378.

The Proposed Rule does not clearly define the outer bounds of what the Commission considers to be included within a company’s Scope 3 GHG emissions. The GHG Protocol, on which the Proposed Rule heavily relies, identifies fifteen potential categories of activities that could give rise to Scope 3 GHG emissions; specifically, for downstream activities and applicable here, “a registrant’s leased assets related principally to the sale or disposition of goods or services.”<sup>11</sup> NRP writes to explain why the Scope 3 reporting requirements in general, and specifically this category of Scope 3 emissions, are infeasible for all passive income/royalty companies with businesses similar to ours.

As set forth in more detail below, the SEC should eliminate its proposed requirements for the disclosure of Scope 3 GHG emissions or, at a minimum, incorporate an exemption from Scope 3 GHG emissions similar to that provided in Regulation S-K Subpart 1300. Certain provisions of Subpart 1300 provide that “a registrant that has a royalty, streaming or other similar right” but which lacks information specified pursuant to the regulations about “the underlying properties,” may “omit such information” subject to certain requirements; namely, that the company disclose which information it lacks access to and provide an explanation for this lack of access.<sup>12</sup> The Commission should adopt the same model here, allowing companies such as NRP to indicate what information it has omitted to disclose, thereby still providing investors with decision-useful information to account for in their investment decisions but which, most importantly, would be material and accurate. This change is critical for businesses operating under a model such as ours, where we do not operate our leases and do not have control over the amount or production of Scope 3 GHG emissions.

i. Scope 3 GHG Emissions Will Be Impossible to Determine and Unhelpful to Investors.

There are considerable practical problems with obtaining and disclosing Scope 3 GHG emissions for natural resource companies, especially passive income/royalty companies, such as NRP. This is all the more true given that Scope 3 GHG emissions are likely to be the largest portion by far of such companies’ total GHG emissions and they are infinitely more complex to calculate. For companies in our industry, this would be a truly monumental data collection exercise that would result in little, if any, decision-useful information for investors.

First, natural resource and land companies like NRP whose business models are based on collecting passive income or royalties and who do not conduct operations, do not have access to the vast amounts of data needed to attempt to calculate Scope 3 GHG emissions. The Proposed Rule relies heavily on the GHG Protocol to define the emissions that need to be disclosed as part of a company’s Scope 3 GHG emissions. Under GHG Protocol Category Thirteen—Downstream Leased Assets, a reporting company’s Scope 3 GHG emissions from its downstream leased assets (*i.e.*, the lessor here) would include the Scope 1 and Scope 2 GHG emissions of its lessees, dependent on the lessees’ consolidation approach.<sup>13</sup> This would mean that a natural resource owner

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<sup>11</sup> Proposed 17 C.F.R. § 229.1500(r).

<sup>12</sup> *See, e.g.*, 17 C.F.R. §§ 229.1303(a)(3); 1304(a)(2).

<sup>13</sup> GREENHOUSE GAS PROTOCOL, TECHNICAL GUIDANCE FOR CALCULATING SCOPE 3 EMISSIONS 128 (2013).

that enters into leases like ours would potentially include emissions from all of the operations of our lessees and our lessees' purchased electricity, as well as all of the downstream combustion of all of the end uses of the natural resources that our lessees or others in their value chain process and sell.<sup>14</sup>

Scope 3 GHG emissions are beyond the direct control of companies like NRP who would be responsible for collecting, verifying, and reporting the data. NRP leases its acreage for coal, industrial minerals, and other natural resources operations. Most of these leases are very old, were entered into several decades ago, and still have considerable time remaining (anywhere between five to forty years). These leases do not provide us with extensive rights to the control of the behavior of the operator leasing the property nor do they afford us the right to demand information regarding emissions from our lessees. Furthermore, many of our leases continue for decades without renewal or modification, limiting our ability to impose new emissions reporting requirements through base terms. As a result, and contrary to the Commission's stated justification for Scope 3 disclosures, we cannot "influence those activities"<sup>15</sup> of our lessees that create GHG emissions.

A land company like ours simply cannot collect and verify the information necessary to determine Scope 3 GHG emissions. At best, companies like ours will have to rely on emissions reports prepared by others with only limited ability to assess the validity of the data provided. In most cases, the information will simply be unavailable. As the GHG Protocol's Technical Guidance explains, "[c]ompanies requesting scope 1 and scope 2 data from lessees . . . may need to request additional information from the lessee in order to properly allocate emissions to the reporting company's leased assets."<sup>16</sup> But our leases do not provide us with the necessary rights to obtain the information required for NRP to collect Scope 3 GHG emissions data.<sup>17</sup> Additionally, many of our lessees are private companies that are not required to collect such data. This means that we will not be able to collect accurate Scope 3 data from our lessees.

We also will not be able to generate accurate Scope 3 data on our own: Even if a resource company like ours were able to gather Scope 1 and 2 data from its various lessees, it would be truly implausible and infeasible to ask for reporting on the emissions associated with downstream activities, such as fuel combustion, of the extracted resources given where land companies sit in the value chain. This would require companies like NRP to somehow follow the products produced, transported, or sold by the lessees operating on its acreage down the value chain to their ultimate end use or combustion. The mineral interests that we own and that are produced by lessees include thermal and metallurgical coal, as well as limestone, natural gas, lithium, copper, lead, zinc, and timber. These raw materials are used in a large variety of products and businesses across the world and are marketed to thousands of customers by third parties who we do not control.

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<sup>14</sup> See GREENHOUSE GAS PROTOCOL, CORPORATE VALUE CHAIN (SCOPE 3) ACCOUNTING AND REPORTING STANDARD, APPENDIX A (2011).

<sup>15</sup> 87 Fed. Reg. at 21,377.

<sup>16</sup> TECHNICAL GUIDANCE, *supra* note 13, at 129.

<sup>17</sup> The structure of our leases does not provide contractual checkpoints, like those in oil and gas arrangements, that would allow an opportunity for renegotiation to seek the information the Commission is looking for here.

Given the broad range of natural resources that we lease and the number of different products they can be used for, the variety of third parties that may purchase and resell those products, and the numerous end uses and end users for such products, this would be an impossible task. For example, consider the soda ash produced from the Sisecam Wyoming plant. Calculating emissions from this would include accounting for the train transporting the soda ash, the ships exporting the product, the manufacturing of glass from the soda ash in other countries, the use of the glass in other manufacturing operations (*e.g.*, the auto industry), and so on and so forth.

The Commission has already recognized that accurately determining Scope 3 GHG emissions will be a challenge for all companies because it requires them to amass large amounts of data that are outside of their control and their abilities to independently verify the data. As the Commission itself noted:

It may be difficult to obtain activity data from suppliers and other third parties in a registrant's value chain, or to verify the accuracy of that information. It may also be necessary to rely heavily on estimates and assumptions to generate Scope 3 emissions data.<sup>18</sup>

This is even more true for resource companies like NRP, or other companies with a business model that entails leasing (rather than operating) the assets that it owns and relying on passive income or royalty payments. For companies like ours, we simply will not have access to the kinds of information about the downstream uses of the products generated from our assets that are necessary to generate Scope 3 GHG emissions data. Such challenges are further compounded by our limited resources and personnel. Indeed, our entire business model is based on being able to have a very limited role in the management of our vast resources.

The concerns with asking companies like ours to disclose Scope 3 emissions are not limited to the burdens that it places on those registrants, although we note again that those burdens will ultimately be felt by investors insofar as the additional costs affect profitability. The Scope 3 disclosure requirements are also problematic because the amount of guesswork involved in creating these disclosures creates a high risk that the figures disclosed will not be accurate and will potentially mislead investors. At the same time, it would expose companies like us to liability risks. The proposed safe harbor provisions are not a fix as they do not provide any protection from private securities litigation.

As a result, NRP urges the Commission to remove the proposed disclosure requirement for Scope 3 GHG emissions from any final rule. Alternatively, if the Commission retains the requirement, then NRP urges the Commission to adopt an exemption from disclosure of Scope 3 GHG emissions for passive income/royalty companies similar to that of Regulation S-K Subpart 1300. Failing to include such an exemption will not only prove burdensome to companies such as

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<sup>18</sup> 87 Fed. Reg. at 21,390.

NRP but will prove unhelpful to investors given the practical implications and distinct lack of access to such information that NRP and similarly situated companies have.

ii. The Proposed Definition of “Material” Scope 3 GHG Emissions Is Arbitrary.

The Commission’s proposed approach to determining “materiality” for Scope 3 GHG emissions not only represents a significant departure from traditional principles of materiality, but is also absolutely arbitrary as its application to our business model demonstrates. According to the Proposed Rule, “[w]hen assessing the materiality of Scope 3 emissions, registrants should consider whether Scope 3 emissions make up a relatively significant portion of their overall GHG emissions”<sup>19</sup> The proposed approach would create the perverse result where companies with small operational footprints like ours—and therefore minimal Scope 1 and Scope 2 GHG emissions—would be the most likely to have “material” Scope 3 GHG emissions. And likewise, it would create the perverse situation where a company that works to lower its own Scope 1 and 2 GHG emissions would likely have (now comparatively higher) Scope 3 GHG emissions that would become “material” and thus trigger the expensive and complex disclosure requirements outlined in the Proposed Rule. Rather than adopting a proportionality-based test, the Commission’s approach to any Scope 3 disclosures should focus on materiality in the traditional sense of the term under existing Supreme Court precedent.

More than four decades ago, the U.S. Supreme Court explained that the notion of “materiality” under federal securities law depends on whether there is “a substantial likelihood that a reasonable shareholder would consider” the information in question to be “important.”<sup>20</sup> Indeed, the materiality standard is designed to “filter out essentially useless information that a reasonable investor would not consider significant, even as part of a larger ‘mix’ of factors to consider in making his investment decision.”<sup>21</sup> The “importance”—if any—of GHG emissions data for investors will have little or nothing to do with the proportion between its scopes.

As the Court explained, where “the event is contingent or speculative in nature, it is difficult to ascertain whether the ‘reasonable investor’ would have considered the omitted information significant at the time.”<sup>22</sup> This determination “requires delicate assessments,” and a “fact-specific” inquiry, rather than bright-line rules of what a “‘reasonable shareholder’ would draw from a given set of facts and the significance of those inferences to him.”<sup>23</sup> By requiring all companies to consider materiality based on the relative portion of overall GHG emissions, the SEC is applying the exact kind of bright-line rule that the Supreme Court cautioned against for materiality determinations involving speculative information. As discussed above, NRP’s Scope 3 GHG emissions—like all Scope 3 GHG emissions—will be speculative in nature, and their relative importance to investors will be fact-specific based on the operations of the company. While NRP believes a reasonable investor would not consider the Company’s Scope 3 GHG

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<sup>19</sup> *Id.* at 21,379.

<sup>20</sup> *TSC Indus.*, 426 U.S. at 449; *accord Basic Inc.*, 485 U.S. at 232.

<sup>21</sup> *Basic Inc.*, 485 U.S. at 234 (citing *TSC Indus.*, 426 U.S. at 448-49).

<sup>22</sup> *Id.* at 232.

<sup>23</sup> *Id.* at 236 (quoting *TSC Indus.*, 426 U.S. at 450).

emissions significant in the course of its leasing business,<sup>24</sup> the Proposed Rule has a more fundamental problem of imposing a one-size-fits-all approach to materiality that the Supreme Court has explicitly rejected.

The Commission has not demonstrated that proportionality is a good proxy for materiality in this context: There is nothing in the Proposed Rule to support the idea that having a higher proportion of Scope 3 GHG emissions is a meaningful indicator of exposure to climate risks or would provide material information to investors. As a result, the Commission has not provided any supportable basis for defining “materiality” in this way.<sup>25</sup> And there are many real world counter-examples that demonstrate why proportionality cannot be equated with materiality for Scope 3 GHG emissions. For example, NRP has 52 employees and a limited physical office presence, but it owns and leases a vast amount of natural resources for a wide variety of uses. For those operating under similar business models, Scope 3 GHG emissions will almost always dwarf the company’s minimal Scope 1 and 2 GHG emissions but may nonetheless be immaterial to investors in the traditional sense of the term.

Moreover, the Proposed Rule also does not explain how the required disclosures will be important in light of the “mix” of information that investors already receive about material climate-related risks. Consistent with the Commission’s 2010 climate change disclosure guidance,<sup>26</sup> NRP and similarly situated entities who operate mineral leasing businesses already provide disclosures regarding material climate change risks, including the risk of shifting demand for the minerals they lease. Additionally, qualitative disclosures of these risks will be required under Proposed Item 1502(a)(1)(ii), which requires a company to discuss its potential exposure to transition risks.<sup>27</sup> Given these requirements, it is not clear how quantitative Scope 3 GHG emissions disclosures will alter the “total mix” of information available about a company simply because they represent a high proportion of the company’s total emissions. Instead, this overly simplistic proportionality test will encourage the disclosure of significant volumes of quantitative information that are not likely to alter an investor’s view of the transition risks faced by a particular company. Such disclosures will “simply [] bury the shareholders in an avalanche of trivial information—a result that is hardly conducive to informed decisionmaking.”<sup>28</sup>

If the Commission does retain the proposed proportionality approach to “materiality” for Scope 3 emissions, then companies with diversified portfolios (and particularly those who do not themselves operate those portfolios) would need considerably more guidance from the

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<sup>24</sup> Indeed, the materiality requirement exists to “filter out essentially useless information that a reasonable investor would not consider significant, even as part of a larger ‘mix’ of factors to consider in making his investment decision.” *Basic Inc.*, 485 U.S. at 234 (citing *TSC Indus.*, 426 U.S. at 448–49). The “importance” of this information for investors will have little or nothing to do with the proportion between its scopes.

<sup>25</sup> The Commission also declined to define the threshold at which Scope 3 GHG emissions should be deemed to constitute a “relatively significant portion” of a company’s total emissions. *See* 87 Fed. Reg. at 21,378. Instead, the Proposed Rule notes that “some companies rely on, or support reliance on, a quantitative threshold such as 40 percent when assessing the materiality of Scope 3 emissions.” *Id.* at 21,379.

<sup>26</sup> *See* Commission Guidance Regarding Disclosure Related to Climate Change, 75 Fed. Reg. 6290, 6294, 6296 (Feb. 8, 2010).

<sup>27</sup> Proposed 17 C.F.R. § 229.1502(a)(1)(ii).

<sup>28</sup> *Basic Inc.*, 485 U.S. at 231.

Commission regarding the determination of the “materiality” of their Scope 3 GHG emissions. One of the only guidance points the Proposed Rule includes is directed toward “oil and gas product manufacturers” whose Scope 3 GHG emissions are likely to be material and, therefore, subject to the disclosure requirements.<sup>29</sup> However, this guidance is not helpful where businesses like NRP are diversified in their portfolio, and have future plans to diversify even further to accommodate low-carbon activities (therefore resulting in coal and industrial mineral extraction activities amounting to less of their total revenue). The example is also not helpful for situations, such as ours, where we do not “manufacture,” create, buy or sell products, or otherwise actively “operate” our assets.

It is, therefore, crucial that, if the Commission retains its current approach to Scope 3 GHG emissions disclosures, the Commission also incorporate an exemption similar to Regulation S-K Subpart 1300 applicable to passive income/royalty companies that are the most likely to have very limited Scope 1 and Scope 2 GHG emissions and thus proportionately higher Scope 3 GHG emissions.

iii. The Scope 3 Disclosure Requirements Pose Challenges to Companies Looking to Take Part in the Energy Transition.

The challenges above are further exacerbated for companies such as NRP that are navigating the transition to a low-carbon economy by aligning with new opportunities. For example, NRP currently holds the legal rights to sequester carbon dioxide underground in approximately 3.5 million acres and plans to further expand this part of its business and pursue additional opportunities in the geothermal, solar, and wind energy space. A Scope 3 GHG emissions disclosure requirement, however, could stall our ability to transition into some of these emerging areas. Companies like us may be hesitant to enter into new contracts in new lines of business until we are certain that we could accurately determine changes to our Scope 3 GHG emissions resulting from these new leases, out of fear that inaccurate disclosures could result in liability. New low-carbon projects are also less likely to have an established record of GHG emissions or estimates, which could create further barriers to entry and challenges for a company like NRP that would have to revise its materiality analysis for Scope 3 disclosures each time it wanted to engage in one of these new lines of business. Given the size of NRP’s staff, it may not be possible to revise Scope 3 estimates on the timeline required by the Proposed Rule each time it wants to enter into a new lease for a new low-carbon project in emerging areas. As a result, companies like NRP may decide to “play it safe” and forego these opportunities and instead continue to renew leases with existing operators for lines of business that have a more established history and record of emissions.

### III. Comments Related to Physical Risk Disclosures

The Proposed Rule requires detailed disclosures about physical risks—defined to include risk from “extreme weather” and “other natural conditions.” Given our large and diverse natural resource portfolio, the broad definitions and prescriptive, granular disclosure requirements will be

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<sup>29</sup> 87 Fed. Reg. at 21,378–79.

difficult to implement and will flood our investors with information that is not “decision useful.” We therefore recommend that the Commission revisit its proposed approach and provide registrants more flexibility to determine the appropriate (material) information to share with investors when they determine that physical climate-related risks are in fact material to their business. Specifically, we do not think these disclosures should be included as line-item disclosures under Regulation S-X, and the disclosures under Regulation S-K should provide companies with greater flexibility to determine what information is material as part of a larger “‘mix’ of factors to consider in making [an] investment decision.”<sup>30</sup>

The Proposed Rule defines “physical risks” as inclusive of “both acute risks and chronic risks to the registrant’s business operations or the operations of those with whom it does business.”<sup>31</sup> Under Proposed Item 1502, a registrant is then required to disclose climate-related risks reasonably likely to have a material impact on its business or consolidated financial statements.<sup>32</sup> The proposed definition of “physical risks” is overly broad and includes “extreme weather” as an “acute risk” and the nebulous, undefined “other natural conditions.” The Proposed Rule would require us to then determine the impacts of the severe weather events and other natural conditions on each consolidated financial statement line item, using an unprecedentedly low 1% threshold.<sup>33</sup> Within each category of impacts we would then, “at a minimum,” be required to disclose on an aggregated, line-by-line basis all negative impacts and, separately, on an aggregated, line-by-line basis all positive impacts.<sup>34</sup> For the small team that oversees NRP’s approximately 13 million acres of mineral interests and other subsurface rights across the United States, this is an impossible task.

Given the breadth of our physical holdings, the granularity of the proposed requirements would only serve to overwhelm our investors with weather and geographic-specific information that is not material to our overall business. As applied to our business, these requirements are not in keeping with Supreme Court case law where “the Court was careful not to set too low a standard of materiality; it was concerned that a minimal standard might bring an overabundance of information within its reach, and lead management ‘simply to bury the shareholders in an avalanche of trivial information—a result that is hardly conducive to informed decisionmaking.’”<sup>35</sup>

For example, because land companies like NRP have a diverse set of natural resource assets (including timber), they would face tremendous challenges in accurately disclosing the financial impacts of severe weather events, as proposed in Regulation S-X. The Proposed Rule would require NRP to “[d]isclose the impact of severe weather events and other natural conditions, such as flooding, drought, wildfires, extreme temperatures, and sea level rise on any relevant line items in the registrant’s consolidated financial statements during the fiscal years presented. Disclosure must be presented, at a minimum, on an aggregated line-by-line basis for all negative impacts and,

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<sup>30</sup> *Basic Inc.*, 485 U.S. at 234 (citing *TSC Indus.*, 426 U.S. at 448-49).

<sup>31</sup> Proposed 17 C.F.R. § 229.1500.

<sup>32</sup> *Id.* § 229.1502(a).

<sup>33</sup> *Id.* § 210.14-02(b)(2).

<sup>34</sup> *Id.* § 210.14-02(c).

<sup>35</sup> *Basic Inc.*, 485 U.S. at 231 (quoting *TSC Indus.*, 426 U.S. at 448-49).

separately, at a minimum, on an aggregated line-by-line basis for all positive impacts.”<sup>36</sup> Given the geographic breadth of our holdings, weather and “natural conditions” will always have some impact on our assets. But that same breadth and diversity of holdings also means that many of these events are simply not material to our business overall. To the extent they are, they are better discussed through qualitative principles-based disclosures as are already required under the SEC’s existing rules and guidance. For instance, an investor is much more likely to understand that wildfires and droughts can generally pose a risk to our timber assets, and that an increase in wildfires or droughts will increase those risks. But asking us to quantify the impact of any one fire or drought, or thinking that such numbers will change the overall mix of information available to our investors is absurd.

Furthermore, the Proposed Rule’s definition of severe weather events, which includes “other natural conditions” is too vague for companies to know the full extent of events that should be included. The vagueness of this phrase will leave companies to make independent judgment calls about what event to include, meaning that the disclosures across companies, even within the same industry, will not be comparable. At the same time, the vague requirement will put these companies at risk of inadvertent noncompliance with the new requirement.<sup>37</sup>

The proposed timelines for these disclosures will also lead to unhelpful and non-comparable disclosures. Proposed Item 1502(a) requires companies to disclose “any climate-related risks reasonably likely to have a material impact on the registrant, . . . which may manifest over the short, medium, and long term.” Proposed Item 1502(a) does not provide definitions of short-, medium- and long-term risks. Instead, the Proposed Rule would leave companies to define these timeframes. The only guidance the Commission has provided as to how a company should define these timeframes states that “a registrant would be required to describe how it defines short-, medium- and long-term time horizons, including how it takes into account or reassesses the expected useful life of the registrant’s assets and time horizons for the registrant’s planning processes and goals.”<sup>38</sup> For us, our mineral assets can last for very long time horizons. For example, some mining operations can continue at the same site for decades or longer. Reporting on physical climate risks over such long time horizons will inevitably lead to widely varying disclosures that are unlikely to be useful to investors. The Commission suggests that companies must look at both the probability the event will occur and the potential magnitude or significance to the registrant. These guidelines are unhelpful when considering physical climate risks that will occur over the course of the short-, medium-, and long-term and where the magnitude of potential impacts will depend in part on developments in the intervening time period.

These are just a few of the issues with the Commission’s current approach to physical disclosures. NRP strongly recommends limiting all physical risk discussions, including any related to weather events, to traditional principles-based materiality discussions in the Regulation S-K disclosures. This approach better accounts for the complex impacts that could result for individual companies like NRP and their unique businesses. If the Commission does retain the Regulation S-

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<sup>36</sup> Proposed 17 C.F.R. § 210.14-02(c).

<sup>37</sup> *Id.*

<sup>38</sup> 87 Fed. Reg. at 21,351.

X requirements, then it should limit and clarify the definitions of terms including and within “physical risks” and revise the proposed 1% line-item threshold.

#### **IV. Comments on Other Aspects of the Proposed Rule**

##### ***a. Governance Disclosures***

The Proposed Rule currently requires disclosure of information regarding “whether any member of the board of directors has expertise in climate-related risks” and, if so, to detail the nature of the board member’s expertise.<sup>39</sup> Our small-scale operations and limited resources do not naturally lend themselves to requiring discrete board expertise for every risk, including climate-related risks. Instead, our board members and management must wear multiple hats and familiarize themselves with a variety of issues related to our business. The practical result of requiring the disclosure of climate-related expertise is that companies like ours will have to focus on this particular characteristic of a board member over a myriad of other traits and types of expertise that are equally or more important to our business. The “disclosure” requirement in the Proposed Rule is also vague as to what level of expertise is required, and it is unclear whether a small public company like ours could find someone with both the climate expertise and other knowledge and skills we seek in a board member. We are concerned that single expertise directors may not be able to contribute more broadly to the oversight of the Company, an efficiency which is critical for NRP as the board of directors of the general partner makes decisions on the Company’s behalf. Instead, we consider an effective board to be one in which broadly-skilled members have the ability to oversee and advise on a wide range of risks that the Company faces, including climate matters, among others. Respectfully, individual companies and their boards, not the SEC, are best placed to make the decisions as to what risks and strategic priorities will require board-level expertise.

The proposed disclosures related to our internal management are also problematic, particularly for a company of our size. Proposed Item 1501(b) would require companies to “[d]escribe management’s role in assessing and managing climate-related risks” including information such as: (1) Whether management positions or committees are responsible for assessing and managing climate-related risks and relevant expertise of those so charged; (2) Processes by which management is informed about and monitors climate-related risks; (3) Whether and how frequently management reports to the board on climate-related risks; and (4) Management’s role in assessing climate opportunities, if applicable.<sup>40</sup>

Respectfully, our company already has internal methods appropriate to its size and business structure to discuss and elevate material issues. The Commission’s one-size-fits-all approach makes no sense for companies such as ours, with a small management team, only two physical offices, and no operations. Unlike large public companies with complex reporting chains, much of our internal decisionmaking happens through less formal conversations between our employees and management team, and when climate-related issues (particularly under the Commission’s broad definition of the term) come up, it is usually in the context of other business decisions.

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<sup>39</sup> Proposed 17 C.F.R. § 229.1501(a).

<sup>40</sup> *Id.* § 229.1501(b).

Attempting to formalize a structure around these issues is more likely to hinder, rather than promote, our ability to freely discuss these issues as necessary.

We therefore recommend that the SEC remove Proposed Item 1501 in its entirety and permit companies to determine the appropriate material disclosures and board composition, including a mix of skills and backgrounds, that will enable them to most effectively oversee the unique risks that each company faces, as well as the best ways to discuss climate-related issues internally. In the alternative, we would propose the addition of safe harbors commensurate with similar SEC proposed rules for board members,<sup>41</sup> to insulate them from criticism of decisions taken in good faith on a reasonable basis, which could lead to the dis-incentivization of climate risk experts coming forward to take on board positions.

### ***b. Operational/Equity Control***

The Proposed Rule currently requires registrants to disclose their GHG emissions after calculating them from all sources included in their organizational and operational boundaries.<sup>42</sup> “Organizational boundaries” is defined in the Proposed Rule as “the boundaries that determine the operations owned or controlled by a registrant for the purpose of calculating its GHG emissions.”<sup>43</sup> The preamble provides guidance as to how the Commission’s approach diverges from the GHG Protocol’s standards and guidance as to determining organizational boundaries, requiring instead a registrant to set such boundaries “using the same scope of entities, operations, assets, and other holdings within its business organization as those included in, and based upon the same set of accounting principles applicable to, its consolidated financial statements.”<sup>44</sup>

Under the GHG Protocol, a company can use two distinct approaches to determine its organizational boundaries: the equity share approach and the control approach.<sup>45</sup> Under the former, a company accounts for the GHG emissions from operations according to its share of equity in those operations.<sup>46</sup> Under the latter, a company accounts for 100% of the GHG emissions from the operations over which it has control.<sup>47</sup> Control can be defined based on financial or operational terms.<sup>48</sup> To the extent the SEC does require GHG emission disclosures, we believe it should align its approach with the GHG Protocol.

The Proposed Rule fails to recognize the complicated accounting that a registrant must engage in for their consolidated financial statements disclosures. Registrants’ past inventories of their GHG emissions (to the extent they have them) are very likely to have excluded immaterial categories and relied, where necessary, on estimates. If companies are forced to change this approach in order to square with what registrants consolidate in their financial statements, it would

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<sup>41</sup> See, e.g., Proposed Rule on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, 87 Fed. Reg. 16,590 (Mar. 23, 2022).

<sup>42</sup> Proposed 17 C.F.R. § 229.1504(e)(2)-(3). See also 87 Fed. Reg. at 21,384.

<sup>43</sup> Proposed 17 C.F.R. § 229.1500(m).

<sup>44</sup> 87 Fed. Reg. at 21,384.

<sup>45</sup> GREENHOUSE GAS PROTOCOL, A CORPORATE ACCOUNTING AND REPORTING STANDARD 17 (2004).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 17-18.

increase the reporting burdens and provide more room for error and investor confusion. Such investor confusion will be only further compounded in attempts to evaluate GHG emissions inside and outside of the SEC reporting framework due to the lack of consistency with the GHG Protocol's standards and guidance.

For the above-listed reasons, we therefore suggest that the SEC align its approach to organizational boundaries with the approach of the GHG Protocol and allow companies to determine whether to make disclosures when they do not have operational control.

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

Respectfully submitted,

**NATURAL RESOURCE PARTNERS L.P.**

By: NRP (GP) LP, its general partner

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