California Climate-Disclosure Legislation:
Senate Bills 253 and 261, as amended by SB 219

CARB Comment Letter

Cal Water has provided feedback on the following questions raised by the California Air Resources Board (CARB) in response to the "Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219." Cal Water appreciates the opportunity to raise these items to CARB for consideration as part of the rulemaking process for the California Climate laws.

General Standards in Regulation

3. CARB is tasked with implementing both SB 253 and 261 in ways that would rely on protocols or standards published by external and potentially non-governmental entities.

a) How do we ensure that CARB's regulations address California-specific needs and are also kept current and stay in alignment with standards incorporated into the statute as these external standards and protocols evolve?

Cal Water recommends that CARB consider requirements from other state agencies, such as the California Public Utilities Commission (CPUC) and Department of Water Resources, when considering existing climate planning and reporting requirements for water utilities in California as part of its rulemaking for SB 261. For example, as a water utility, Cal Water must prepare Water Supply and Facilities Masters Plans, Urban Water Management Plans, Water Shortage Contingency Plans, and Annual Water Supply and Demand Assessments, which all account for the impacts of climate change as these risks relate to infrastructure risks and water supplies and shortages.

The CPUC also issued an Order Instituting Rulemaking (R-18-04-019) in 2018 to integrate climate change adaptation matters in relevant CPUC proceedings for electric and gas utilities. While formal requirements have not been issued for water utilities, in addition to the long-term water supply and demand planning prepared in compliance with California Water Code and CPUC requirements, Cal Water also prepares the following voluntary studies that address climate-related risks:

- Climate Change Risk Assessment and Adaptation Framework: Determines risk for specific water sources based on threat likelihood, consequence magnitude, and vulnerability.

- Regional Water Supply Reliability Studies: Enhances reliability, by assessing existing and regional water supplies under multiple scenarios and supply and demand options. Considers climate-driven risks, recommendations for further review, and potential adaptation measures and projects.

- Conservation Master Plans: Evaluates conservation efforts to promote cost-effective conservation programs that help customers use water efficiently.

These mandatory and voluntary studies inform Cal Water's current Taskforce on Climate-related Financial Disclosures (TCFD) Content Index in its ESG Report, CDP (formerly known as the Carbon Disclosure Project) response, and its financial reporting disclosures (10-K and Proxy Statement) related to climate.

b) How could CARB ensure reporting under the laws minimizes a duplication of effort for entities that are required to report GHG emissions or financial risk under other mandatory programs and under SB 253 or 261 reporting requirements?

Cal Water recommends allowing CDP reporting to fulfill SB 253 and SB 261 reporting requirements due to its alignment with the TCFD and the current International Financial Reporting Standards (IFRS) Framework (S1 and S2), which is actively being considered by other jurisdictions for mandatory reporting.

c) To the extent the standards and protocols incorporated into the statute provide flexibility in reporting methods, should reporting entities be required to pick a specific reporting method and consistently use it year-to-year?

Cal Water recommends that CARB allow for flexibility in the reporting methods selected by reporting entities. Business needs and circumstances may change over time and result in changes to reporting methods. Cal Water also recommends that CARB allow reporting entities to have a phase-in period of at least one year to transition to different reporting standards if necessary. CARB could achieve this reporting method flexibility through allowing reporting entities to utilize their CDP reporting to fulfill SB 253 and SB 261 reporting requirements as CDP includes detailed questions about GHG emissions and climate-related risks.

<u>General: Data Reporting</u>

5. Should the state require reporting directly to CARB or contract out to an "emissions" and/or "climate" reporting organization?

Cal Water recommends allowing reporting organizations to fulfill both SB 253 and SB 261 reporting requirements through submission of a public CDP response. CDP is globally recognized as a purveyor of standardized environmental data for a variety of stakeholders, including investor signatories. Currently, CDP aligns with <u>various reporting frameworks</u>, including the TCFD recommendations and the IFRS S2 Climate-related Disclosure requirements published by the International Sustainability Standards Board (ISSB). CDP recently announced that it will require a license to access or use public disclosure data but will also collaborate with the Net-Zero Data Public Utility (NDPU) to provide some climate data from companies. Cal Water recommends that CARB utilize the filing fees for the climate disclosure laws to fund access to climate data reported by entities subject to the climate disclosure laws. By allowing a CDP response to fulfill reporting requirements, CARB would reduce potential duplication, administrative burden, and fees for reporting entities, as they must already pay a fee in many cases to submit a CDP response. CDP respondents can use the platform to provide GHG emissions and TCFD-based climate risks, required by SB 253 and 261, respectively.

6. If contracting out for reporting services, are there non-profits or private companies that already provide these services?

Cal Water recommends CDP as the service provider.

SB 253: Climate Corporate Data Accountability Act

7. Entities must measure and report their emissions of greenhouse gases in conformance with the GHG Protocol, 1 which allows for flexibility in some areas (i.e. boundary setting, apportioning emissions in multiple ownerships, GHGs subject to reporting, reporting by sector vs business unit, or others). Are there specific aspects of scopes 1, 2, or 3 reporting that CARB should consider standardizing?

Cal Water recommends that CARB follow the Greenhouse Gas (GHG) Protocol and avoid further interpretation or changes to this standard, as the GHG Protocol already provides flexibility unique to businesses. Efforts to deviate from the GHG Protocol standards could increase the reporting burden on companies.

Cal Water recommends that CARB permits the use of secondary data collection methods (e.g., spend-based data for Scope 3) indefinitely to meet SB 253 reporting requirements. The GHG Protocol currently permits this type of data collection due to challenges associated with collecting Scope 3 data. Should there be updates to the GHG Protocol reporting standards (e.g., the GHG Protocol Corporate Accounting and Reporting Standard), Cal Water recommends allowing reporting entities at least one fiscal year to update their reporting methods before adherence to the new standard is required.

8. SB 253 requires that reporting entities obtain "assurance providers." An assurance provider is required to be third-party, independent, and have significant experience in measuring, analyzing, reporting, or attesting in accordance with professional standards and applicable legal and regulatory requirements.

a) For entities required to report under SB 253, what options exist for third-party verification or assurance for scope 3 emissions?

Both accounting and audit firms, as well as specialized GHG emissions verifiers, provide verification services. Given the technical nature of GHG emissions data and the SB 253 bill text, Cal Water recommends allowing the use of an audit firm OR specialized GHG emissions verification firm for conducting GHG emissions assurance if the reporting entity follows an appropriate process and standard (e.g., International Auditing and Assurance Standards Board (IAASB) International Standard on Assurance Engagements (ISAE) 3000 Revised, Assurance Engagements Other than Audits or Reviews of Historical Financial Information) and the assurance professional has expertise in GHG emissions accounting and assurance.

Due to the uptick in assurance requirements from both SB 253 and other mandatory climate disclosure requirements, including the European Union's Corporate Sustainability Reporting Directive (CSRD) that applies to some U.S. companies, the availability of assurance providers to perform assurance services in time for upcoming reporting deadlines may become a challenge for reporting entities, especially given the need to ensure assurance provider independence. As a result, allowing flexibility in the type of firm for assurance services is preferred.

b) For purposes of implementing SB 253, what standards should be used to define limited assurance and reasonable level of assurance? Should the existing definition for "reasonable assurance2" in MRR be utilized, and if not why?

Cal Water recommends ensuring consistency and interoperability with third-party assurance requirements and using the International Auditing and Assurance Standards Board (IAASB) International Standard on Assurance Engagements (ISAE) 3000 Revised, Assurance Engagements Other than Audits or Reviews of Historical Financial Information. Cal Water recommends transitioning to the International Standard on Sustainability Assurance (ISSA 5000) over the next several years, as the IAASB recently published this standard to address the need for a sustainability assurance standard for various global sustainability reporting and disclosure requirements.

Cal Water recommends revisiting the definition of "reasonable" assurance under MRR ("high degree of confidence that submitted data and statements are valid") to verify GHG emissions data. Cal Water recommends specifying that reasonable assurance criteria should be considered in the context of reporting standards from the GHG Protocol, which acknowledges inherent uncertainty in GHG emissions accounting methodologies. For example, the U.S. Environmental Protection Agency's (EPA's) eGrid emissions factors are based on annual emissions and generation data reported by power plants in a sub-region. Reporting entities use the EPA's regional emissions factors to calculate location-based Scope 2 emissions, which introduces some inherent estimation. Currently, the GHG Protocol only provides this method for measuring Scope 2 GHG emissions from grid electricity (GHG Protocol Scope 2 Guidance, 2015, pp. 46-47).

9. How should voluntary emissions reporting inform CARB's approach to implementing SB 253 requirements? For those parties currently reporting scopes 1 and 2 emissions on a voluntary basis:

c) What frequency (annual or other) and time period (1 year or more) are currently used for reporting?

Cal Water recommends annual reporting based on the prior fiscal year and base year data. Cal Water recommends permitting a base year prior to the first year the reporting entity must report to CARB, as many reporting entities may already report GHG emissions and track progress towards emissions reduction targets.

d) When are data available from the prior year to support reporting?

Data from the prior fiscal year is typically available during Q1 of the preceding fiscal year. Businesses may also experience changes during the calendar year such as acquiring new entities that require additional time to collect data to support the GHG emissions inventory process, for example, if the acquired entity had not previously tracked its GHG emissions.

Cal Water recommends allowing reporting entities to disclose SB 253 and/or SB 261 information anytime within one year of fiscal year close to accommodate long data collection processes, base year recalculations, ESG report publication dates, and CDP responses (typically due in September).

SB 261: Climate Related Financial Risk Disclosure

10. For SB 261, if the data needed to develop each biennial report are the prior year's data, what is the appropriate timeframe within a reporting year to ensure data are available, reporting is complete, and the necessary assurance review is completed?

Cal Water recommends allowing reporting anytime within one year of the end of the fiscal year close for all companies to allow time for regulated reporting, data collection, review, and publication.

11. Should CARB require a standardized reporting year (i.e., 2027, 2029, 2031, etc.), or allow for reporting any time in a two-year period (2026-2027, 2028-2029, etc.)?

Cal Water recommends that CARB allow reporting entities to disclose any time within the second year of the biennial period.

13. Many entities that are potentially subject to reporting requirements under SB 261 are already providing other types of climate financial risk disclosures.

f) What other types of existing climate financial risk disclosures are entities already preparing?

According to CDP data, over 23,000 companies representing two thirds of global market capitalization disclosed through CDP in 2023. CDP provides an avenue for disclosing climate financial risk information relevant to SB 261.

g) For covered entities that already report climate related financial risk, what approaches do entities use?

Cal Water studies physical climate risks as part of its Climate Change Risk Assessment and Adaptation Framework with three risk assessment stages common to adaptation planning that align with implementation guidance issued by the TCFD: framing the assessment, conducting the vulnerability assessment, and carrying out the risk evaluation, which informs an adaptation framework that determines Cal Water's order of operations for addressing key risks. Please refer to our Climate Change Risk Assessment & Adaptation Framework: Executive Summary and Climate Change Risk Assessment & Adaptation Framework Highlights. Many organizations already report climate-related financial risk in their CDP responses.

h) and i) In what areas, if any, is current reporting typically different than the guidance provided by the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures? If not consistent with the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures, are there other laws, regulations, or listing requirements issued by any regulated exchange, national government, or other governmental entity that is guiding the development of these reports?

Cal Water already proactively assesses climate risks consistent with the methods used by California electric and gas utilities to comply with CPUC and other requirements from state agencies. These requirements provided (please see pp. 2-3 of the Climate Change Risk Assessment and Adaptation Framework Executive Summary) provide more detailed guidance than the framework provided by the TCFD. Cal Water recommends that CARB provide more detailed guidance regarding risk assessment expectations for SB 261 reporting to help reporting entities provide useful and comparable information for stakeholders.

Additional Comments

Cal Water seeks clarification from CARB regarding the following items:

SB 253: Climate Corporate Data Accountability Act

- How will CARB apply the revenue reporting threshold to reporting entities year over year? For example, if a company meets the $1 billion threshold in the first year of required reporting for SB 253, then falls below the threshold for the next three years, is the reporting entity subject to SB 253 reporting requirements based on having crossed the threshold once, or only for that reporting year?

- What will CARB deem as acceptable proxy data where data is not available for acquisitions and mergers and when merged companies must start providing data pursuant to Section 38532(c)(E) of the Health and Safety Code below?
    - (E) That a reporting entity's disclosure takes into account acquisitions, divestments, mergers, and other structural changes that can affect the greenhouse gas emissions reporting and is disclosed in a manner consistent with the Greenhouse Gas Protocol standards and guidance or an alternative standard, if one is adopted after 2033.

SB 261: Climate Related Financial Risk Disclosure

- Cal Water requests additional clarification with respect to Section 38533(b)(1)(B) of the Health and Safety Code below:
    - If a covered entity does not complete a report consistent with all required disclosures pursuant to clause (i) of subparagraph (A), the covered entity shall provide the recommended disclosures to the best of its ability, provide a detailed explanation for any reporting gaps, and describe steps the covered entity will take to prepare complete disclosures.
        - Would the reporting reliefs described above be consistent with those described by the IFRS S1 and S2 standards regarding avoiding "undue cost or effect" and disclosing "reasonably available" information?
- What is the implication of Health and Safety Code Section 38533 (b)(5) below for companies also subject to SB 253? What is meant by "considering" these GHG emissions claims?
    - To the extent a climate-related financial risk report contains a description of a covered entity's greenhouse gases or voluntary mitigation of greenhouse gases, the state board may consider covered entity's claims if those claims are verified by a third-party independent verifier.