

DEPARTMENT OF ENVIRONMENTAL QUALITY

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David K. Paylor Director

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Matthew J. Strickler Secretary of Natural Resources

STATE WATER CONTROL BOARD MEETING

THURSDAY, SEPTEMBER 20, 2018

HOUSE COMMITTEE ROOM, FIRST FLOOR POCAHONTAS BUILDLING 900 EAST MAIN STREET RICHMOND, VIRGINIA

Board Members Present:

Robert L. Dunn, Chair Roberta A. Kellam G. Nissa Dean

Heather L. Wood, Vice-Chair Lou Ann Jessee-Wallace Timothy G. Hayes

Board Members Absent:

Robert H. Wayland, III

Department of Environmental Quality:

David K. Paylor, Director Debra A. Harris

Cindy M. Berndt

Attorney General's Office:

David C. Grandis, Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened at 9:33 a.m., recessed at 11:52 a.m., reconvened at 1:04 p.m., and adjourned at 3:20 p.m.

Approved Minute No. 3 December 13,2018



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 20, 2018

MINUTE NO. 1 - Minutes

The Board deferred action on the minutes from the August 21, 2018, meeting due to a question raised on Minute No. 6. Specifically, Ms. Kellam questioned the accuracy of the wording of a motion by Mr. Wayland regarding modifying or revoking certification of Nationwide Permit 12 as it relates to the Atlantic Coast Pipeline and Mountain Valley Pipeline projects. Ms. Cindy Berndt advised the Board that staff believed the minute to be accurate, but would review meeting records and submit minutes for the August 21, 2018, meeting to the Board at the next meeting.

Cindy M. Berndt



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Mathew J. Strickler Secretary of Natural Resources

David K. Paylor Director 804-698-4000

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF SEPTEMBER 20, 2018

MINUTE NO. 2 Regulation- Final Exempt amendment to the Groundwater Withdrawal Regulations (9VAC25-610) and Fees for Permits and Certificates (9VAC25-20) - Chapter 424 of the 2018 Acts of Assembly

Melissa Porterfield presented the State Water Control Board (Board) with a final exempt amendment to the Groundwater Withdrawal Regulations (9VAC25-610) and Fees for Permits and Certificates (9VAC25-20). These regulations are being modified in response to Chapter 424 of the 2018 Acts of Assembly.

The Board was asked to adopt the amendment to the Groundwater Withdrawal Regulations (9VAC25-610) and Fees for Permits and Certificates (9VAC25-20) as a final exempt regulation.

Board Decision

Based on the briefing materials and the staff presentation, the Board voted unanimously to accept the staff recommendation to:

- Adopt the amendments to the Groundwater Withdrawal Regulations (9VAC25-610) and Fees for Permits and Certificates (9VAC25-20) as presented and directed the agency to make the regulation effective as soon as possible; and
- Affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Jutta Schneider

Division of Water Planning



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David K. Paylor Director 804-698-4000

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF SEPTEMBER 20, 2018

MINUTE NO. 3 Regulation- Final Exempt amendment to the Groundwater Withdrawal Regulations (9VAC25-610) - Chapter 427 of the 2018 Acts of Assembly

Scott Kudlas presented the State Water Control Board (Board) with a final exempt amendment to the Groundwater Withdrawal Regulations (9VAC25-610). This regulation is being modified to incorporate changes needed in response to Chapter 427 of the 2018 Acts of Assembly.

This amendment adds a new section requiring a technical evaluation of aquifers underlying subdivisions of 30 or more lots in a designated Groundwater Management Area. The technical evaluation consists of an analysis of hydrogeologic data collected at the site that is input into a groundwater model to determine the ability of the aquifer to provide the desired amount of water without pulling the water level below a predetermined level or negatively impacting existing withdrawers. The technical evaluation will recommend to the developer the aquifer or aquifers that achieve this goal. A mitigation plan is required if the developer chooses not to abide by the recommendation. A fee, not to exceed \$5000, will be charged to recover the cost of preparing the technical evaluation. The Board was asked to adopt the amendment to the Groundwater Withdrawal Regulations (9VAC25-610) as a final exempt regulation.

Board Decision

Based on the briefing materials and the staff presentation, the Board voted unanimously to accept the staff recommendation to:

- Adopt the amendment to the Groundwater Withdrawal Regulations (9VAC25-610) as presented and directed the agency to make the regulation effective as soon as possible; and
- Affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Jutta Schneider

Division of Water Planning

Muneider 9/27/2018



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF SEPTEMBER 20, 2018

MINUTE NO. 4 Regulation- Final Exempt amendment to the Water Withdrawal Reporting (9VAC25-200)

Melissa Porterfield presented the State Water Control Board (Board) with a final exempt amendment to the Water Withdrawal Reporting (9VAC25-200). This regulation is being modified to correct a citation in the regulation.

The Board was asked to adopt the amendment to the Water Withdrawal Reporting (9VAC25-200) as a final exempt regulation.

Board Decision

Based on the briefing materials and the staff presentation, the Board voted unanimously to accept the staff recommendation to:

- Adopt the amendment to the Water Withdrawal Reporting (9VAC25-200) as presented and directed the agency to make the regulation effective as soon as possible; and
- Affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Jutta Schneider

Division of Water Planning



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 20, 2018

MINUTE NO. 5 – Stormwater Management Regulations – Rural Tidewater Localities and Construction General Permit Notice of Termination Processing (9VAC25-870)

The Virginia Stormwater Management Program (VSMP) regulation amendment incorporates statutory provisions that became effective July 1, 2018. These provisions include:

- (1) An option for rural Tidewater localities to implement a tiered approach in the implementation of water quantity requirements based on a watershed's impervious cover to satisfy the VSMP technical criteria for projects equal to or greater than 2,500 square feet and less than one acre;
- (2) An option for rural Tidewater localities to accept plans signed and sealed by a licensed professional to satisfy local plan review requirements for projects equal to or greater than 2,500 square feet and less than one acre; and
- (3) Requirements for local VSMP authorities to recommend that DEQ terminate coverage under the VPDES General Permit of Discharges of Stormwater from Construction Activities within 60 days of receipt of a complete notice of termination (NOT) from the operator; permit coverage be deemed terminated within 90 days after receipt of a complete NOT; and for any VSMP authority receiving an incomplete NOT to inform the operator within a reasonable time a detailed list of the missing elements.

These action are required by Chapters 154 (HB1307), 155 (HB1308), and 630 (SB741) of the 2018 Acts of Assembly. Prior to the meeting, the Board was provided with briefing materials including a proposed final regulation and memorandum summarizing the proposed changes. Jaime Robb from the Office of Stormwater Management gave a brief summary of the proposed amendments.

Board Decision:

Matthew J. Strickler

Secretary of Natural Resources

Based on the briefing materials and the staff presentation, the Board voted unanimously to approve the amendments to the Virginia Stormwater Management Program regulation (9VAC 25-870).

Melanie D. Davenport



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MINUTE NO. 6 – Final Exempt - Virginia Water Protection Program (VWPP) Regulations - 2018 Legislation

Debra Harris, Office of Regulatory Affairs, presented a final exempt regulatory amendment to 9VAC25-210, 9VAC25-670, and 9VAC25-690. Ms. Harris informed the Board that the amendments were necessary in order to incorporate changes to the State Water Control Law made during the 2018 General Assembly session. Ms. Harris provided a synopsis of the changes made by Chapters 636 and 114 of the 2018 Acts of Assembly. Chapter 636 added requirements and provisions for the construction of any natural gas transmission pipeline greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)). Chapter 114 added an exemption from VWPP permitting for certain stormwater management facilities. Ms. Harris then went through the regulatory amendments incorporating the necessary changes and the final exempt process.

BOARD DECISION

Based on the board book briefing items and staff presentation, the Board, on motion by Mr. Hayes and seconded by Ms. Kellam, adopted the amendment incorporating the changes made to 9VAC25-210, 9VAC25-670, and 9VAC25-690; authorized the amendment's publication; and, affirmed that the Board will receive, consider and respond to requests by any interested person at any time respect to reconsideration or revision.

Debra A. Harris

Policy and Planning Specialist



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 20, 2018

MINUTE NO. 7 – Virginia Pollutant Discharge Elimination System Permit Regulation; Public Notice of Permit Actions (9VAC25-31-290)

Prior to the meeting the Board was provided briefing materials which included a revised draft of the subject regulation, allowing abbreviated public notice procedures for industrial minor permit actions. The proposed revision was in response to 2018 legislation of the General Assembly which amended and reenacted § 62.1-44.16 of the Code of Virginia, relating to discharge of industrial wastes; notice of application. Emilee Adamson from the Office of VPDES Permits presented a summary of changes from the proposed regulations.

Board Decision

Matthew J. Strickler

Secretary of Natural Resources

Based on the briefing material and the staff presentation, the Board voted unanimously to adopt the amendments to the Virginia Pollutant Discharge Elimination System Permit Regulation (9VAC25-31). The Board also affirmed that they will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of the regulations, as provided by the Administrative Process Act.

Melanie D. Davenport



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MINUTE NO. 8 – Virginia Pollutant Discharge Elimination System General Permit for Concrete Products Facilities (9VAC25-193)

Prior to the meeting the Board was provided briefing materials which included a revised draft of the subject general permit regulation, the fact sheet for the general permit, the Agency Background Document (TH-09) which included the public comment and the agency response and the Technical Advisory Committee membership. Elleanore Daub from the Office of VPDES Permits presented a summary of changes from the proposed regulations that were made in response to public comment.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to adopt the amendments to the Virginia Pollutant Discharge Elimination System General Permit for Concrete Products Facilities (9VAC25-193). The Board also affirmed that they will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of the regulations, as provided by the Administrative Process Act.

Melanie D. Davenport



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MINUTE NO. 9 – General VPDES Permit Regulation for Discharges of Stormwater from Construction Activities (9VAC25-880)

This proposed regulation is for the reissuance of the General VPDES Permit Regulation for Discharges of Stormwater from Construction Activities. The current general permit will expire on June 30, 2019. Prior to the meeting the Board was provided with briefing materials including a draft of the amended regulation and memorandum summarizing the proposed changes. Jaime Robb from the Office of Stormwater Management gave a brief summary of the significant proposed amendments to the regulation.

Board Decision:

Matthew J. Strickler

Secretary of Natural Resources

Based on the briefing materials and the staff presentation, the Board voted unanimously to authorize a notice of public comment period and public hearing for amendments to the General VPDES Permit Regulation for Discharges of Stormwater from Construction Activities (9VAC25-880). The Board also authorized the staff to serve as hearing officer for the public hearing.

Melanie D. Davenport



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MINUTE NO. 10 - Virginia Pollutant Discharge Elimination System General Permit Regulation for Nonmetallic Mineral Mining (9VAC25-190)

Prior to the meeting the Board was provided materials including a briefing memo to the Board, which included a list of the technical advisory committee membership, the regulation showing proposed amendments, and the town hall agency background document. Peter Sherman, from the Office of VPDES Permits, presented a summary of the significant proposed changes to the regulation.

Board Decision

Matthew J. Strickler

Secretary of Natural Resources

Based on the briefing material and the staff presentation, the Board voted unanimously to authorize a public comment period and public hearing for amendment and reissuance of the VPDES Nonmetallic Mineral Mining General Permit, 9VAC25-190. The Board also authorized the staff to serve as hearing officer for the public hearing.

Melanie D. Davenport

Director, Division of Water Permitting



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 20, 2018

MINUTE NO. 11 - General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity (9VAC25-151)

Prior to the meeting the Board was provided materials including a briefing memo to the Board, which included a list of the technical advisory committee membership, the proposed regulation, and the town hall agency background document. Matt Richardson, from the Office of VPDES Permits, presented a summary of the substantive proposed changes to the regulation.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to authorize a public comment period and public hearing for amendment and reissuance of the VPDES Industrial Stormwater General Permit, 9VAC25-151. The Board also authorized the staff to serve as hearing officer for the public hearing.

Melanie D. Davenport

Director, Division of Water Permitting



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 20, 2018

MINUTE 12 — Request to Proceed to Public Comment and Hearing on Proposed Amendments to the Water Quality Standards Regulation (9VAC25-260): Numeric Chlorophyll-a Criteria for the Tidal James River and their Assessment Methodology

Mr. John Kennedy, Director of the Office of Ecology, began the presentation to the Board regarding proposed amendments to water quality criteria for numeric chlorophyll criteria in the tidal James River and the assessment method used to test compliance. The James River chlorophyll criteria are found in Virginia's Water Quality Standards Regulation at 9 VAC 25-260-310 (bb). It was first noted that a minor correction was needed in Attachment 2 of the Board materials. Use of the term "Spring" was inadvertently repeated for the second set of seasonal mean criteria, while it should read "Summer". The Board was informed that this change has been made in the Regulation Information System so the text of the proposal that will be available on-line is correct.

Background information was given on the original criteria adoption in 2005 and the subsequent need for the study when nutrient reductions, predicted as necessary to attain the criteria, appeared in EPA's 2010 Chesapeake Bay TMDL that were more stringent than those used as the basis for the standards. Specifics of the 2011 General Assembly's appropriation of funds and a directive for the purpose of the study were also presented. The existing standards and locations for their application were shown, along with a summary of the major tasks accomplished under the study workplan. Findings from the study's Scientific Advisory Panel, peer review by the EPA-Cheaspeake Bay Program's Scientific Technical Advisory Committee, and use of a Regulatory Advisory Panel for the rulemaking were also explained.

Dr. Tish Robertson then led the Board through a technical presentation on the proposed criteria changes beginning with the purpose of the study, which principally included: an evaluation of the protectiveness of the existing criteria for aquatic life; to develop revised criteria that were scientifically defensible, if deemed necessary; and, improvements to the assessment methodology to address identified weaknesses. Descriptions were given of the expanded monitoring that was done, laboratory toxicity tests performed, and findings from the Science Advisory Panel, all of which led to the conclusion that there was sufficient cause to update the chlorophyll criteria and reformulate the assessment methodology.

The proposed numeric criteria were presented, consisting of two sets of chlorophyll concentrations that applied across five salinity regions: (1) seasonal (spring and summer) geometric mean values; (2) short-duration criteria which are higher magnitude and only apply in the summer. It was explained that the justification for the proposed seasonal mean values was protection against elevated pH and harmful algae blooms (HABs), or to prevent increased phytoplankton biomass where harmful effects could not be verified scientifically. The basis for the short-duration criteria is additional protection against toxic harmful algal blooms. Changes to the assessment methodology were summarized, including the allowable exceedance frequencies and other factors making the process more tailored to James River chlorophyll, as well as ensuring that data will be analyzed in a manner consistent with how the proposed criteria were developed.

The Board was informed about the water quality modeling aspect of the study and status of scenario runs being performed under contract with VIMS to test varying degrees of treatment stringency, geographical and seasonal application, and sensitivity to TN vs. TP reductions. Results will allow DEQ to estimate the total nitrogen and total phosphorous waste load allocations for point sources needed to achieve the proposed criteria. Modeling results will be presented to the Regulatory Advisory Panel, probably by late October, so that affected permittees will understand the treatment implications of the proposed criteria and potential impact on point source waste load allocations. The Board was also informed that certification of their authority to adopt the proposed amendments had been received from the Office of the Attorney General.

Several clarifying questions from the Board were addressed, including: the scope of the enhanced monitoring; reasons why algal-related effects were not observed in some areas of the river; and, timing for release and discussion of the water quality modeling results.

Decision:

Based upon the information provided to the Board and the staff recommendations, the Board by a unanimous vote approved the following actions:

- 1. Authorize staff to proceed to public comment with proposed amendments to the James River chlorophyll criteria in the W.Q. Standards Regulation, 9 VAC 25-260-310 (bb), as presented today, with the correction noted in Attachment 2 of the Board materials.
- 2. Convene public hearing(s) on the proposed amendments with a Board member serving as hearing officer.

Julia Schneider, Director
Division of Water Planning

9/27/2018 Date



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 20, 2018

MINUTE NO. 13 - Enforcement Program Overview

The Board received a report from Mr. Justin Williams, Acting Director of the Enforcement Division, on the Department's enforcement program.

Cindy M. Bundt
Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 20, 2018

MINUTE NO. 14 - Significant Noncompliance Report

Kristen Sadtler, Water Enforcement Program Manager, informed the Board that four permittees were reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance for the quarter ending March 31, 2018. The permittees reported were:

- 1. Bedford Regional Water Authority for the Bedford Wastewater Treatment Plant
- 2. Town of Lawrenceville for the Lawrenceville Wastewater Treatment Plant
- 3. Town of Abingdon for the Wolf Creek Water Reclamation Facility
- 4. E.I.DuPont de Nemours and Company for the DuPont Teijin Films Facility

The Board accepted the report with no comment.

Kristen Sadtler

Water Enforcement Program Manager



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 20, 2018

MINUTE NO. 15 - VPDES Program Consent Special Order

Kristen Sadtler, Water Enforcement Program Manager, presented to the Board the Consent Special Order for Nutrien Ag Solutions, Inc. (formerly Crop Production Services, Inc.). The Board unanimously approved the Order and further authorized the Department's Director to execute the Order on the Board's behalf and to refer violations of the Order to the Office of the Attorney General for appropriate legal action.

Kristen Sadtler

Water Enforcement Program Manager



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 20, 2018

MINUTE NO. 16 - VPDES Program Consent Special Order

Kristen Sadtler, Water Enforcement Program Manager, presented to the Board the Consent Special Order for the King George County Service Authority. The Board unanimously approved the Order and further authorized the Department's Director to execute the Order on the Board's behalf and to refer violations of the Order to the Office of the Attorney General for appropriate legal action.

Kristen Sadtler

Water Enforcement Program Manager



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 20, 2018

MINUTE NO. 17: Consent Special Orders - Cambria 2014, LLC

Lee M. Crowell, Enforcement Operations Manager, presented to the Board the Consent Special Order for Cambria 2014, LLC. The Board approved the Order, and further authorized the Department's Director to execute the Order on the Board's behalf and to refer violations of the Order to the Office of the Attorney General for appropriate legal action.

Lee. M. Crowell

Enforcement Operations Manager



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MINUTE NO. 18: Consent Special Orders - Harbor Station Communities, LLC

Matthew J. Strickler

Secretary of Natural Resources

Lee M. Crowell, Enforcement Operations Manager, presented to the Board the Consent Special Order for Harbor Station Communities, LLC. The Board approved the Order, and further authorized the Department's Director to execute the Order on the Board's behalf and to refer violations of the Order to the Office of the Attorney General for appropriate legal action.

Lee. M. Crowell

Enforcement Operations Manager



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 20, 2018

MINUTE NO. 19: Consent Special Orders - Easter Shore Poultry Houses

Lee M. Crowell, Enforcement Operations Manager, presented to the Board the Consent Special Orders for fifty-seven poultry houses operating on the Easter Shore. The Board approved the Orders, and further authorized the Department's Director to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

Lee. M. Crowell

Enforcement Operations Manager



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MINUTE NO. 20 - Water Planning Division Director's Report

Matthew J. Strickler

Secretary of Natural Resources

The Board received a report from Ms. Jutta Schneider, Director of the Water Planning Division, on development of the Chesapeake Bay Watershed Total Maximum Daily Load Phase III Watershed Implementation Plan.

Cindy M. Berndt



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MINUTE NO. 21 - Water Permitting Division Director's Report

Matthew J. Strickler

Secretary of Natural Resources

The Board received a report from Ms. Melanie D. Davenport, Director of the Water Permitting Division. Ms. Davenport provided pipeline updates regarding residential water concerns on Bent Mountain, erosion and sediment control practices of the Department of Mines, Minerals and Energy, and compliance and enforcement. Ms. Davenport also provided the Board information on expoxy coating, potential hurricane impacts and impacts to springs.

Cind M. Secret
Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON SEPTEMBER 20, 2018

MINUTE NO. 22 - Future Meetings

The Board confirmed December 13, 2018, as the date of the next meeting.

Cindy M. Berndt