



# AB 54 – Ethics and Board Regulations for Mutual Water Systems



# WELCOME!

This training is presented by RCAC and sponsored by the SWRCB – Division of Drinking Water

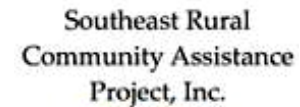


# Your Moderator Today

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RosAnna Noval  
Portland, OR  
[\*\*rnoval@rcac.org\*\*](mailto:rnoval@rcac.org)





## Water Is Life.



COMMUNITY  
RESOURCE GROUP

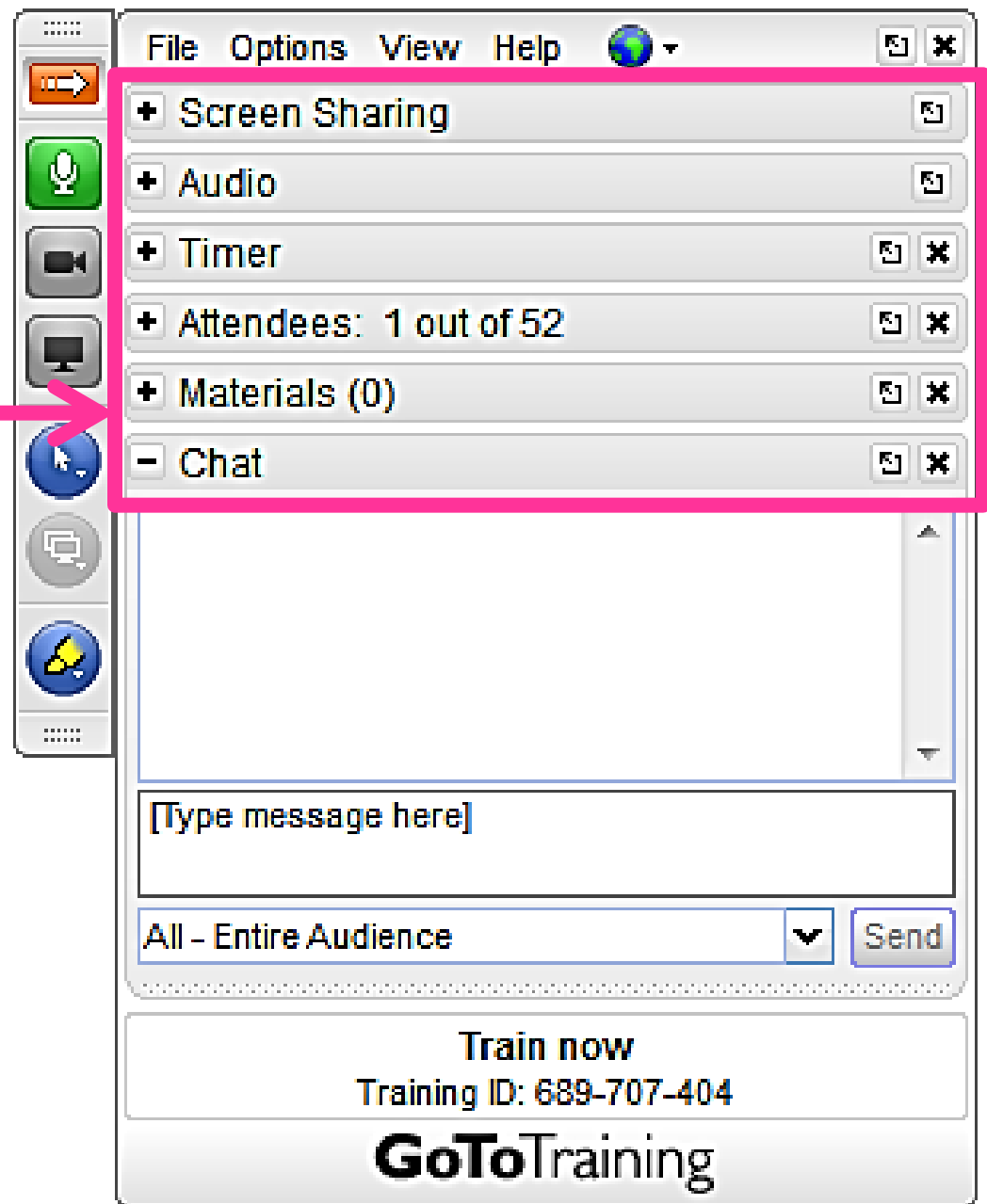


# RCAC Programs

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- Affordable housing
- Community facilities
- Water and wastewater infrastructure financing (Loan Fund)
- Classroom and online training
- On-site technical assistance
- Median Household Income (MHI) surveys

# Control Tabs

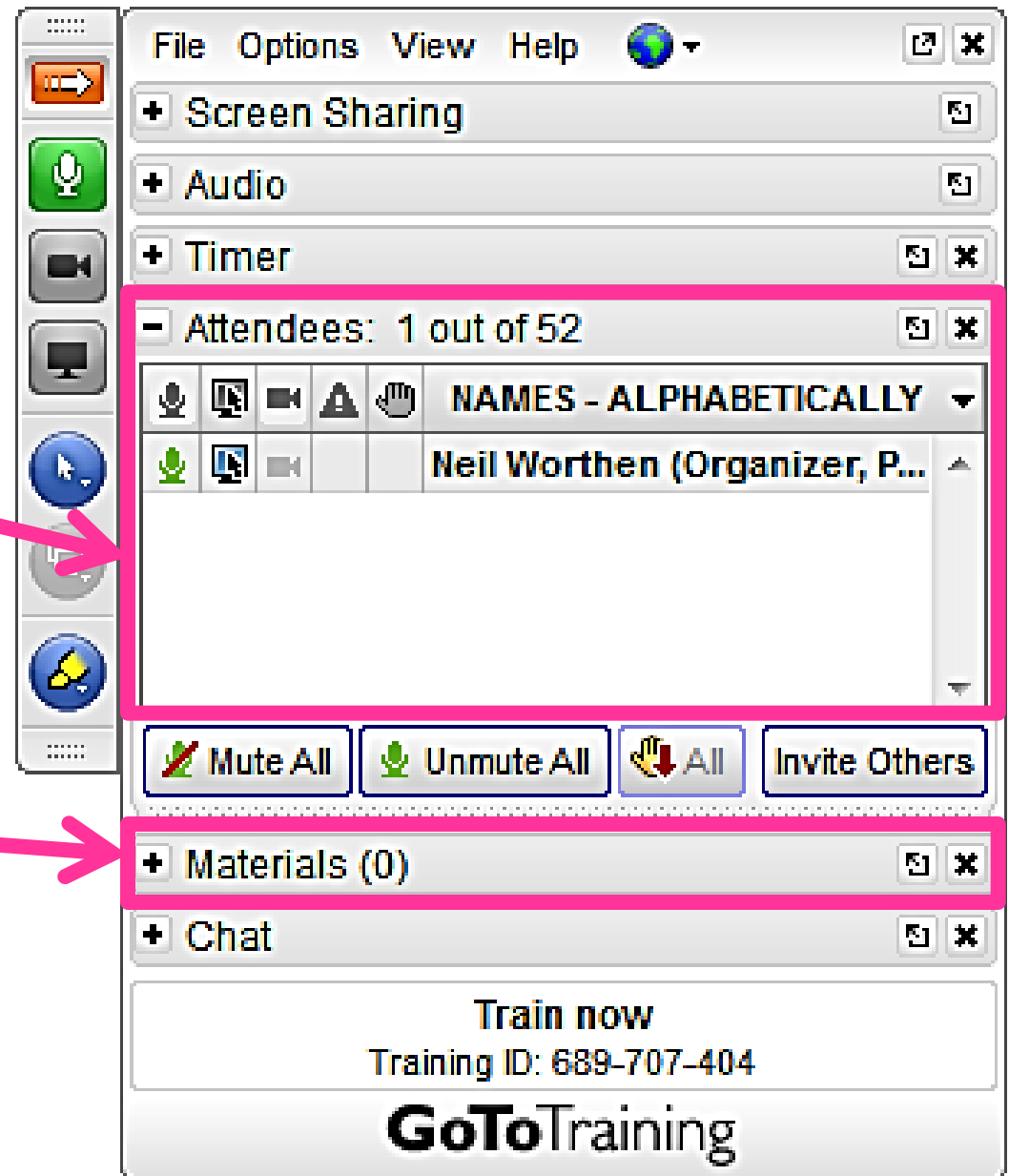


# Audio Controls



**Attendee  
List**

**Today's  
Materials**





# Performance Assessment Rating Tool (PART)

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- 4 to 6 weeks from today
- Email w/ today's workshop in subject line
- 3 questions – 3 minutes maximum
- How did you use the information that was presented today?
- Funders are looking for positive changes
- Help us continue these free workshops!

# Questions?



**Text your questions and comments  
anytime during the session**

# Today's Trainer

Jean Thompson-  
Ibbeson

Rural Development  
Specialist -  
Environmental

[jthompson@rcac.org](mailto:jthompson@rcac.org)





# AB 54 – Ethics and Board Regulations for Mutual Water Systems



# Today's Agenda

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- Overview of AB54
- Duties of Corporate Directors
- How to avoid contractual Conflicts of Interest
- Fiduciary Duties
- Duty to provide water that complies with the SDWA
- Capital Improvement Planning
- Safe Drinking Water Act
- Overview of AB240

# AB54 – Why?

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- Jose J. Solorio (D), Assemblyman 69<sup>th</sup> District
- A mutual water company failed in his district
- Absorbed by another water company
- Assembly has tried to govern MWC's before



# AB 54

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- **Amends Corporate Code**
  - Section 14300, and to add Sections 14300.5, 14301.1, 14301.2, and 14301.3
- **Amends Government Code**
  - Sections 56375 and 56430
- **Adds to the Health and Safety Code, relating to drinking water**
  - To add Section 116760.65 to, and to add Article 12 to Chapter 4 of Part 12 of the Division 104.



# Introduction to AB54

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- Defines “mutual water company”
- Loosens SRF funding criteria
- Comply with “California Waterworks Standards”
- Levy assessment to pay for SDWA violations when fine exceeds 5% annual budget



# Introduction to AB54

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- Should have submitted a map to Local Agency Formation Commission (LAFCO) showing water system boundaries
- Prohibits expanding boundaries without LAFCO approval
- Provide documents to LAFCO as required
- LAFCO municipal service review
- Maintain financial reserve funds

# AB 54 requirements for Board Members

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- Pertains to all mutual water companies
- Each newly elected board member within six months of taking office, and every six years thereafter
- Two hours course offered by a qualified trainer
- Course must cover the basic duties of board members of a mutual water company
- Enforced by the State of California

# Course must cover;

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- Avoid contractual conflicts of interest
- Fiduciary duties
- Duty to provide safe drinking water
- Long term management of a public water system



## Poll Time!

Question 1: What are the four basic training requirements stated in AB54?

# Governance Documents

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Articles of Incorporation & Bylaws: a tool to manage your company

- Key Provisions
  - Indemnification of Directors and Officers
  - Lien on Property for Unpaid Charges and Assessments
  - Amending the Bylaws
- Rules & Regulations

# Duties of Directors

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- Mutual water company directors = corporate directors
  - Duty of Due Care – Business Judgment Rule
    - Good faith
    - Prudent person
    - Corporation's and shareholders best interest in mind
  - Duty of Loyalty
    - Corporate and shareholder interest = personal interest

# Conflicts of Interest

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- Prohibits against acting for the director's personal gain to the detriment of the corporation
  - Contracts or other transactions
  - Interested director not entitled to vote
  - Director's interest disclosed or known to the members

# Conflict of Interest

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- Statutory safe harbors – Corporation Code § 310
  - Disclosure
  - Majority of board (without interested director)
  - Reasonable compensation





## Poll Time!

Poll Question #2: Which of these would be considered a conflict of interest?

# Responsibility Issues

- Making contractual decisions for others
  - Stewards of members resources
- Perception matters
- Personal *and* organizational ethics



# Stakeholders have a right to honest services

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- Right to conscientious, loyal, faithful, disinterested, unbiased service
- Free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption

# Disqualification Based on Financial Interests

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- **Rule:** You may not participate in a decision if financial interests are affected by a decision
- Effect can be positive or negative
- Recuse yourself



# Typical Governance Issues

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- Inspection of Corporate Records
  - Shareholders List (§ 1600)
    - The records of shareholders shall also be open to inspection and copying by any shareholder or holder of a voting trust certificate
  - Financial Records (§ 1601)
  - Directors – Absolute right (§ 1602)
    - All books, records and documents of every kind
    - Physical property of the corporation
    - In person or by agent or attorney
    - Includes right to make copies

# Typical Governance Issues

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- Shareholders & Shares
  - Appurtenant vs. Non-Appurtenant California Corporation Code (§14300)
  - Annual Shareholders Meetings
    - Must be held 60 days of designated day or 15 months from last meeting (§ 600); court can then order meeting be held
    - Quorum (§ 602)
    - Proxies
    - Notice of Annual Meeting (§601)

# Typical Governance Issues

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- Election of Directors – according to Articles or Bylaws
- New law effective January 1, 2012: SB 918 (Anderson)
  - Allows for four year terms
  - Terms to be staggered
  - Determine by lot which directors will initially serve two year terms

# Typical Governance Issues

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- Directors as Managers
  - General Rule: Nothing prohibiting directors as officers of the Company
  - Downfalls exist – employee practices and transactions
    - Dealing with employees is always a concern when individual directors give direction to employees, without Board authorization
    - Transactions between director and the Company



# Fiduciary Duties

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- Budgets
- Rates
- Capital Improvement Planning
- Termination of Service
- Collection Issues
- Financial statements

All shall be held accountable!

# Financial Matters - Budgets

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- Estimated expenses:
  - Prior year actuals, plus cost of inflation, any known or estimated increases
  - Build reserve funds (AB54 requirement)
- Estimated revenue:
  - Prior year actual sales

# What did you say is in AB54?

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- Requires a financial reserve fund (CIP)  
14301.3 (b) A mutual water company that operates a public water system shall maintain a **financial reserve fund** for the repairs and replacements to its water production, transmission, and distribution facilities at a level sufficient for continuous operation of facilities in compliance with the federal Safe Drinking Water Act

# “True” Cost of Water

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- Operation and Maintenance Expenses
- Administration Expenses
- Reserves
  - Debt reserves
  - Operating reserves
  - Emergency reserves
  - Capital Improvements



## Poll Time!

Poll Question 3: Which of the following are considered a common type of reserve account?

# What is a CIP?

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- Multi-year scheduling of infrastructure improvements and replacement



# Seven steps in developing a Capital Improvement Plan

- Step 1 - What are you going to do?
- Step 2 - How to do it
- Step 3 - Inventory assets
- Step 4 - Rank project priorities
- Step 5 - Analyze financial capacity
- Step 6 - Funding options
- Step 7 - Draft CIP package



# Why do we need a CIP?

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- Saves money by identifying upcoming needs
- It allows a community to spend money wisely, rather than paying top dollar in crisis mode
- By looking at long term costs, it promotes financial and rate stability
- Informs leaders, so they can educate the public



# Reasons why communities resist CIP planning

- Might lock a system into projects
- Isn't flexible
- Commitment to future debt
- May need rate adjustment to support future replacements



# What a Capital Improvement Plan should not be:

- A wish list that is never completed
  - Treatment facilities never built
  - Leaking mains not replaced
  - Storage tanks not rehabbed or replaced
  - Vehicles not purchased



# Questions?

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***Text your questions and  
comments anytime during the  
session***



## QUIZ Time!

Poll Question #4: Why do we need a Capitol Improvement Plan (CIP)?

# Developing a CIP - Conclusion

- A CIP is a living document
- Revisited each year for;
  - Changing circumstances
  - Growth
  - New technologies



# Financial Matters - Rates

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- Rate Setting is base on an accurate budget!
  - Determine if a rate adjustment is necessary
    - Determine what type of a rate structure is best
    - Implement it!

# Customer Services Rules and Regulations

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- Must have at a minimal the following:
  - Rates and charges
  - When late charges will apply, and the amount
  - Termination Notices
  - Amortization of unpaid balance
  - Billing disputes

# Collection Issues

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## Securing Payments of Unpaid Fees, Charges, and Assessments

- Lien Rights on Membership Shares – for assessments (§14303)
- Lien Rights on Property – for non payment of fees, charges, and assessments - AB 240 (added §14304) went into effect Jan. 1, 2014

Must be stated in Articles or Bylaws, if not, amend them, and include timelines (min. 20 days written notice).



# Financial Matters

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- **Distribution of Financial Statement**
  - Corporation Code Section 1500 & 1501
    - Require adequate and correct books of account
    - Must distribute annual report, including financial statements, within 120 days of the end of the fiscal year and at least 15 days (or 35 if sent third class mail) before the annual meeting
  - Bylaw requirements – will vary by company, but must comply with California Law

# Financial Matters – Financial Statements

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- Common types of financial statements
  - Balance Sheet – Statement of Financial Position (system's net worth)
  - Income Sheet – Profit and Loss Statement (revenues versus expenses)
  - Cash Flow Statement – reports on organizations cash flow
  - Pay attention to the check register while you're at it...

# So what did I just say....

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- Start with a good Asset Management/Capital Improvement Plan
- Using standard books of accounting, develop an accurate budget that includes reserves.
- Adopt an annual budget.
- Determine a good rate structure and implement it.
- Create/review/modify a set of customer rules and regulations that includes rates, charges, and termination of service.

# Best Practices...

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- Public Relations:
  - Always **be prepared** to expect the unexpected from your shareholders or constituency.
  - Utilize your annual meetings.
  - Use your CCR report.
  - Email a quarterly newsletter.



**COMMUNICATION** and **TRANSPARENCY** is the key!!

# Added to the Corporation Code

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14301.3. (a) All construction on public water systems operated by a mutual water company shall be designed and constructed to comply with the applicable California Waterworks standards, as provided in Chapter 16 of Title 22 of the California Code of Regulations.

# EPA – The proposal

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- In 1973 the EPA proposes Congress pass the Safe Drinking Water Act
- The SDWA requires all states to meet or exceed primary drinking water standards
- Most states develop their own drinking water standards based on SDWA
- EPA proposes to monitor states to make sure primary standards are met

# Safe Drinking Water Act

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- Federal – SDWA 1974
  - To ensure uniform standards in the U.S. to reduce contamination in drinking water
  - EPA – is the enforcement agency; but can grant a state primary enforcement responsibility. EPA also issues national primary drinking water regulations for contaminants



# SDWA approved by Congress

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- Congress approves SDWA in 1974
- SDWA goes into effect June 1977
- Amended in 1986 and 1996
- Most amendments are called rules





# Safe Drinking Water Act

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- State – SDWA 1976 (H&SC Sec. 116270)
  - SWRCB-DDW – has primary enforcement responsibility; agreement with some local primacy agencies (LPA's) that oversee the small water systems serving <200 connections
  - State drinking water standards must be at least as stringent as the federal standards
  - Applies to all “public water systems” serving >25 individuals at least six month out of the year

# Safe Drinking Water Act

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- Terminology:
  - Maximum Contaminant Level or MCL: “The highest level of a contaminant that is allowed in drinking water.”
  - Maximum Contaminant Level Goal: “The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLG’s are set by the U.S. EPA.”
  - Public Health Goal or PHG: “The level of a contaminant in drinking water below which there is no known or expected risk to health.”

# Safe Drinking Water Act

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- Primary Drinking Water Standards or PDWS; “MCL’s for contaminants that affect public health along with their monitoring and reporting requirements, and water treatment requirements.”
- State regulations regarding water quality (i.e. primary and secondary standards) are found in Title 22 of California Code of Regulations

# Operator Certification Requirements

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- Separate certifications required for distribution and treatment systems
  - Distribution system level of classification primarily determined by population served:
    - D1 – less than 1,000
    - D2 – 1,001 – 10,000
    - D3 – 10,001 – 50,000
    - D4 – 50,001 – 5 million
    - D5 – over 5 million



# Operator Certification

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- Level of certification determined by points based on various treatment constituents and related criteria.
  - T1 – less than 20 points
  - T2 – 20 - 29 points
  - T3 – 40 - 59 points
  - T4 – 60 – 79 points
  - T5 – 80 or more points



# Water Quality - Challenges

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- Maintenance, reserves, and complying with current and new regulations (arsenic, nitrates, uranium, secondary source, etc.) while keeping rates affordable.
- Enforcement = compliance orders, fines of \$200 per day; civil (up to \$25,000 per violation) and criminal (up to \$50,000 per violation) penalties if a knowing violation
- Private actions for violations are possible

# Questions?

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***Text your questions and  
comments anytime during the  
session***



# AB 240 – New Board Regulations for Mutual Water Systems





# AB240 – Why?

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- Anthony Rendon (D-Lakewood), Assemblyman 63rd District
- Three mutual water companies alleged water quality issues in his district not moving forward to resolve the issue
- Collaborate to form a public agency to consolidate and assume responsibility for drinking water in Maywood, CA (LA area)



# Assembly Bill 240

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**Goes into effect January 1, 2014**

- **Adds to Corporate Code**
  - Section 14304, 14305, 14306, and 14307
- **Amends Health and Safety Code, relating to drinking water**
  - Sections 116755 (training every six years)
- **Adds to the Water Code**
  - Section 10531.5 (Maywood collaboration)

# Introduction to AB240

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- Allows company to record a notice of lien against the real property of a member to secure collection
- Open Meeting Act
- Budget requirements
- Public Record Act

# Introduction to AB240

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- Section 14304
  - Allows MWC's to include in their articles or bylaws a provision to record a notice of lien against real property of a member to secure the collection of rates, charges, and assessments.
  - Requires the company to give at least 20 days written notice to the member.

Doesn't include a mandatory process for releasing the lien, but you should include a process in your articles or bylaws.

# Introduction to AB240

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- Sections 14305 -14307

This section shall be known and may be cited as the “**Mutual Water Company Open Meeting Act**”

Note: Only applies to MWC's operating a public water system serving 15 or more service connections.

# MWC Open Meeting Act

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- “Meeting” means either of the following;
  - A congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate any **items of business within their authority.**
  - A teleconference in with a majority of the members of the board, in different locations, are connected by electronic means, either by audio or video or both. **BUT you must....**

# MWC Open Meeting Act

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- “Item of business” means
  - any action within the authority of the board, except those actions that the board has validly delegated to any other person or persons, officer of the MWC, or committee of the Board comprising less than a majority of the directors.

# MWC Open Meeting Act

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- An “eligible person” means
  - member of the company, or
  - an occupant of a property served by the company, or
  - an elected official of a city or county that represents persons that receive water service from the company.





## QUIZ Time!

Poll Question #5: How often do people, other than the board, attend your meetings?

# Mutual Water Company Open Meeting Act

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- Must provide **notice of a meeting** to eligible persons at least four day in advance, including the agenda.
- Except for an **emergency meeting or meetings held solely in executive session**, at least two days notice.
- Any **eligible person** may attend the board meeting, including a teleconference meeting, but must provide 24 hour advance written notice.

# MWC Open Meeting Act

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- Notice (agenda) shall state time, date, location and business to be conducted and given to eligible persons by;
  - Posting in a prominent, publicly accessible place within the territory served by the MWC
  - or by mail at address requested, or by delivery to each unit served by the MWC
  - or with their consent by electronic means.

# MWC Open Meeting Act

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- Teleconference Meetings
  - In a manner that protects the rights of members, unless held in executive session:
    - Notice shall identify at least one physical location.
    - One member of the board or person designated by the board shall be present.
  - Participation constitutes presence as long as you are able to hear one another and members of the association.

# MWC Open Meeting Act

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- Board may not take action on any non emergency matters not on the agenda
  - Exceptions; board members, officers, or staff may
    - respond to statements or questions
    - ask for clarification, make a brief announcement, or brief report of their activities based on their own initiative

# Exception continued

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- Majority of board, or two-thirds vote by members of the board present, if less, than by unanimous vote determines the need to take immediate action came to their attention after the agenda was posted.
- Item was posted for a prior meeting that occurred not more than 30 days before date that action is taken.

# Exceptions continued

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- Members of the board of directors, subject to rules or procedures of the board of directors may;
  - Provide references, or other resources to MWC officers and staff.
  - Request MWC officers or staff to report back at a future meeting, or to place a matter of business on a future agenda.
  - Direct MWC officers or staff to perform administrative tasks necessary to carry out this subdivision.

# MWC Open Meeting Act

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- At the meeting;
  - Before discussing any agenda item openly identify the item to the members.
  - Must allow any eligible person to speak.
    - May not prohibit an eligible person from speaking on issues not on the agenda.
  - Board may adopt a reasonable time limit.



# MWC Open Meeting Act

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- Closed Sessions = Executive Sessions
  - May adjourn into executive session to discuss;
    - Litigation, matters relating to third party contracts, members/shareholders discipline, personnel matters, or meet with member upon their request regarding payment of assessments.
    - Board shall meet in executive session, if requested by member who maybe subjected to fines, penalty, or other forms of discipline, and are entitled to attend.



## QUIZ Time!

Poll Question 6: You may adjourn into executive session to discuss which of the following?

# MWC Open Meeting Act

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- Any matter discussed in executive session shall be generally noted in the minutes of the following open meeting.
- Minutes of the meeting (other than an executive session) shall be made available upon request within 30 days of the meeting, and reimbursement of cost to the company.

# MWC Open Meeting Act

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- Annual budget as required in Section 14306 shall be available to eligible persons within 30 days from the date adopted.
- Shall be provided to any eligible person upon request and reimbursement of costs.

# MWC Open Meeting Act

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- Board of directors shall not
  - Conduct business outside of a meeting.
  - A meeting via a series of electronic transmission, including, but not limited to, electronic mail.

Exception: electronic transmission may be used to conduct emergency meetings if all board member, individually or collectively, consent in writing, and consents filed in the minutes.

# Violations of the Open Meeting Act

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- Eligible persons may bring a civil action for declaratory or equitable relief, within one year of the date the cause of action accrues.
- Eligible persons who prevails in a civil action to enforce their rights are in title to reasonable attorney's fee and court costs.
- The court may impose a civil penalty of up to \$500 for each violation.

## Section 14306 – Annual Budget Requirements

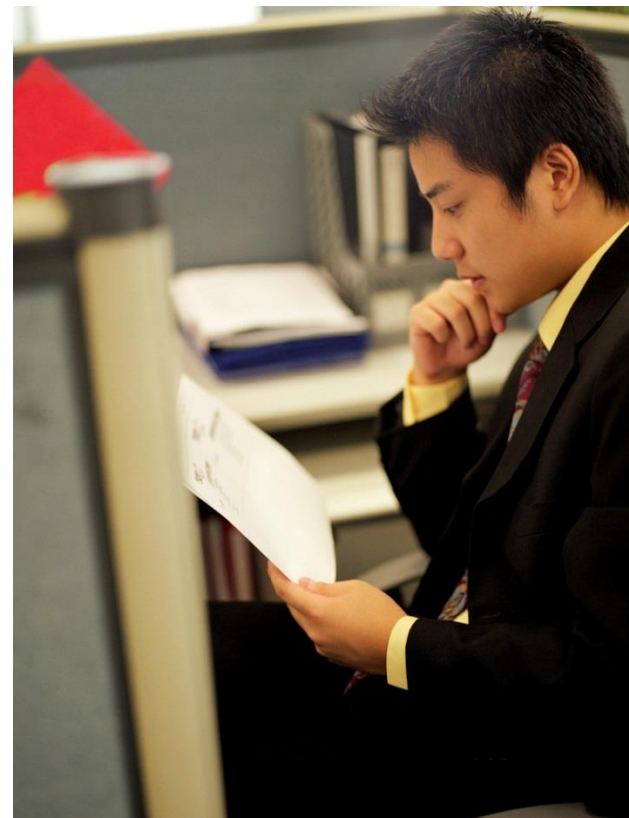
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- Must adopt an annual budget at an open meeting on or before the start of each fiscal year.
- Shall contract with a CPA or public accountant to make an annual review of the financial records and reports, and subject to generally accepted accounting standards.

# Section 14307 – Records Act

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Unless your by-laws or articles of incorporation impose a more stringent standards, the following records shall be made available upon request to an eligible person upon payment of fees covering the direct cost of duplication;





# Records Act continued

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- Agendas and minutes of board meetings.
- Copy of annual budget adopted.
- Copy of annual financial review report.
- Copy of any records reporting results of water quality test.
- Copy of annual report.



# RCAC.ORG, Resources, Tools, Scroll Down

The screenshot shows the RCAC.ORG website. The browser address bar displays "http://www.rcac.org" and the page title is "Rural Community Assistance...". The website features a green logo with the text "RCAC www.rcac.org". Navigation links include "Trainings and Events", "News and Publications", "Resources", and "Contact Us". A "Select Your State..." dropdown menu and a "Google Custom Search" box are present. Social media icons for Facebook, Twitter, LinkedIn, and RSS are displayed. A red navigation bar contains links: "About RCAC", "Who We Serve", "How We Can Help", "Programs and Services", and "Work With Us". The main content area features a large image of a mountain landscape with a barn in the foreground. A white box on the left contains the "Mission" statement: "RCAC provides technical assistance, training and financing so rural communities achieve their goals and visions. [More about RCAC...](#)". Below this, the "GROWING EXPERT RESOURCES" section includes five boxes: "Mutual Self-Help Housing", "Certified Energy Audits", "GSA Contractor Environmental 889.1 & 899.3", "Native American Resources", and "Financing for:" with a list of bullet points: "Affordable Housing", "Infrastructure", "Community Facilities", and "Businesses". The "UPCOMING EVENTS" section lists "July-Dec 2012 California Drinking Water Workshops" (May 22, 2012 - January 2, 2013) and "Smallwatersupply.org Training events calendar for small water supply operators" (August 17, 2012 - August 17, 2013).

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About RCAC | Who We Serve | How We Can Help | Programs and Services | Work With Us

## Mission

RCAC provides technical assistance, training and financing so rural communities achieve their goals and visions. [More about RCAC...](#)

### GROWING EXPERT RESOURCES

- Mutual Self-Help Housing
- Certified Energy Audits
- GSA Contractor Environmental 889.1 & 899.3
- Native American Resources
- Financing for:
  - Affordable Housing
  - Infrastructure
  - Community Facilities
  - Businesses


### UPCOMING EVENTS

July-Dec 2012 California Drinking Water Workshops  
May 22, 2012 - January 2, 2013  
Various in California

[Smallwatersupply.org](#)  
Training events calendar for small water supply operators  
August 17, 2012 - August 17, 2013


[Small System Guide to RUS Management Report](#)

## Financial and Management Tools for Small Communities

 [RCAC Budget Templates -Updated 11-08](#) \_

✦ [Financial Toolbox Instructions v9.6](#)

 [Financial Toolbox v10.3](#)

 [Asst Inventory Worksheet V. 13](#)

✦ [Equipment Replacement Table-Water](#)


✦ [Equipment Replacement Table-Wastewater](#)

 [Water Use Calculator Version 16 \(Zip file >3MG\)](#)

## Asset Management Tools

✦ [Introduction to Asset Management](#)

 [Scheduled Maintenance v6](#)

 [Asset Inventory Worksheet V 12](#)

## Oregon

✦ [Oregon Water and Wastewater Funding and Resource Guide](#)

 [What's in the Water? Pollutant Reduction Resources & Ideas for Utility Decision Makers](#)

 [Do You Know What's in the Water? \(Resource for the general public.\)](#)

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[RCAC Self-Help Builder News  
Volume 5, Issue 2](#)

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(You'll need the free Adobe Acrobat Reader to view documents in PDF format. If you don't have Acrobat Reader, you can [download it free here.](#))

# Resources

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Rural Community Assistance Corp.  
Jean Thompson-Ibbeson – 916/207-8814  
[jthompson@rcac.org](mailto:jthompson@rcac.org)

State Water Resource Control Boards - DDW  
[http://www.waterboards.ca.gov/drinking\\_water/certlic/drinkingwater/TMF.shtml](http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/TMF.shtml)

# Additional Resources

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California Laws – Corporate and Government Codes or Health and Safety Code, and more....

**<http://leginfo.legislature.ca.gov/faces/codes.xhtml>**

Wes Strickland

**<http://privatewaterlaw.com>**

# Additional Resources

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- California Association of Mutual Water Companies – **[www.calmutuals.org](http://www.calmutuals.org)**

Adan Ortega, ED      (916) 933-3303

Provides its members compliance seminars, training opportunities, technical knowledge and resources, people-to-people networking, trade shows, conferences, government relations support, and statewide lobbying.

# Contact Us

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This document was prepared using funds under Agreement 15-017-550 with the California State Water Resources Control Board; the total Agreement is for \$3,971,379 and will produce multiple documents.

# Questions?



**Text your questions and comments**



# Session Evaluation

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- Go to file, click on “close or leave session”
- Evaluation automatically pops up
- If it does not, one will be e-mailed to you within 24 hours
- We need these for your contact hours!