

EXHIBIT 3-A

DRAFT MPWMD GROUNDWATER REPLENISHMENT PROJECT

COST SHARING AGREEMENT

This Cost Sharing Agreement is entered into as of July __, 2013, by and between the Monterey Peninsula Water Management District, a California special act district (“MPWMD”), and DeepWater Desal LLC, a California Limited Liability Company located at 7532 Sandholdt Rd, #6, Moss Landing, CA 95039 (the “Company”), collectively the “Parties”, based upon the following facts, intentions and understandings of the Parties.

I. **BACKGROUND**

A. The Company is developing the Central Coast Regional Water Project (“CCRWP”) at Moss Landing, California. The CCRWP will consist of a number of coastal-dependent industrial uses that will utilize the water of the Monterey submarine canyon at Moss Landing to benefit the regional community. The desalination plant component of the CCRWP will be developed in phases to accommodate both immediate and near-term demand for high purity water. The initial Phase 1 is designed at a capacity of 10,000 acre feet per year (AF/Y) with an ultimate build-out capacity of up to 25,000 AF/Y, sufficient to supply potable water to alleviate critical shortages in both Santa Cruz and Monterey counties.

B. MPWMD was created by the California Legislature in 1977 for the purposes of “conserving and augmenting the supplies by integrated management of ground and surface water supplies, for control and conservation of storm and wastewater, and for the promotion of the reuse and reclamation of water.” The MPWMD’s specific functions are “management and regulation of the use, reuse, reclamation, conservation of water and bond financing of public works projects.” It is authorized to issue bonds, assess charges for groundwater enhancement facilities, levy assessments on real property and improvements, and “fix, revise, and collect rates and charges for the services, facilities, or water furnished by it”.

C. California American Water Company (Cal-Am) proposes that its Monterey Peninsula Water Supply Project will consist of slant intake wells, brackish water pipelines, a desalination plant, product water pipelines, brine disposal facilities, and related appurtenant facilities to meet consumer water needs of the Monterey Peninsula, proposed to be owned and operated solely by Cal-Am. However, Salinas Valley agricultural water users claim that they are at risk of slant wells within the boundaries of the Salinas Valley Groundwater Basin (SVGB) and that Cal-Am’s plan will cause a protracted water rights dispute and possibly trigger an adjudication of the water basin. Claims that have been raised in opposition to Cal-Am’s plan include (i) whether the project would cause harm to others’ groundwater rights and should be addressed through an independent hydrological assessment as soon as possible, (ii) that the SVGB is in overdraft – even though that fact has not been judicially determined – thus it appears there is no surplus water for the project to appropriate, (iii) by leaving the groundwater component in the Salinas Valley, Cal-Am may avoid violation of the Monterey County Water Resource Agency (MCWRA) Agency Act ban on export of groundwater – however, this does

not mean that Cal-Am is not appropriating groundwater at the expense of other groundwater users who may be injured by any additional pumping. Hence, MPWMD considers risk of litigation over Salinas Valley Groundwater rights to be very high.

D. At its December 10, 2012 meeting the MPWMD Board determined that it is in the Monterey Peninsula community's interest to develop a parallel process to advance or qualify an alternative project as a safety contingency. MPWMD could continue to support steady advancement of the Cal-Am application at the CPUC, while at the same time work to advance environmental review and permitting of an alternative water source. This alternative project would be a back-stop to Cal-Am's proposal.

E. MPWMD developed a Request for Qualifications (RFQ) that was distributed January 25, 2013 to the Peoples Moss Landing proponents, DeepWater Desal, Marina Coast Water District, JDL Development, one of the Banks holding a mortgage on the Moss Landing Commercial Park, and to an advisor to one of the banks. A third-party developer originally interested in the RFQ declined. A copy was also forwarded to California American Water. Responses from Peoples Moss Landing and DeepWater Desal were received February 15, 2013. The statements of qualifications were reviewed by the District Engineer and the General Manager and on March 11, 2013 the MPWMD Board instructed its General Manager to enter into negotiations with the Company for a cost sharing agreement that might advance and expedite the environmental and permitting work.

F. Since 2011 the Company has incurred approximately \$2.2 million to advance its plans for the CCRWP. Since the MPWMD Board approval to negotiate a cost sharing agreement in March 2013, the Company has incurred costs of about \$169,948 for environmental and regulatory permitting (through May 2013).

II. AGREEMENT

NOW, THEREFORE, in consideration of the foregoing facts recited and the mutual goals and objectives contained herein, the Parties agree as follows:

A. Finance

1. Environmental and Permitting Development Costs Defined

This Agreement is by its terms limited to sharing of costs of planning and development of the GWR Project, incurred beginning July 1, 2012. Examples of those costs include:

- a. CEQA/NEPA
- b. Other Environmental Permit Requirements
- c. Monitoring and Testing to Support CEQA/NEPA or Permitting
- d. Public Outreach related to CEQA/NEPA

2. Financing of CCRWP Environmental and Permitting Development Costs

The Parties estimate that the costs described in Section 1., immediately above, will total

\$1.6 million as shown in the budget on page 3 of the Company's Statement of Qualifications submitted February 15, 2013. Beginning FY2013-14, MPWMD shall pay fifty percent (50%) of such costs, and the Company shall pay fifty percent (50%) of such costs. The MPWMD's costs may in the future be reimbursed from the proceeds of the permanent financing pursuant to any reimbursement resolution adopted by its Board.

3. Grants and Loans

The Company or MPWMD may each pursue and receive grants, state revolving fund loans, or other forms of reimbursement from local, state, or federal sources. All such receipts will be delivered to MPWMD and credit the CCRWP Project ledger as received. Such receipts will be deemed to offset environmental and permitting development costs.

4. Reimbursement

The Company shall invoice MPWMD and MPWMD shall pay, subject to the conditions described in Section 10.

5. Limited Obligation

MPWMD's financial obligations are limited obligations payable from its Water Supply Charge.

B. Ownership

6. System Ownership and Option

The Company proposes that the desalination plant be owned by a public entity or a publically regulated utility company and operated under the auspices of such owner in compliance with Section 10.72.030.B of the Monterey County Code. The Company grants MPWMD the option to become the owner of the desalination facilities, all improvements and appurtenances, site leases, agreements or contracts for source water, easements, and any other assets related to the desalination plant component of the CCWRP.

MPWMD may exercise this option at any time through and including 60 days following issuance of a Coastal Development Permit by the California Coastal Commission.

Amounts to be paid under Section B.2., above shall serve as consideration for the option.

MPWMD's option is considered a priori to the rights of any other potential owner of the desalination facilities.

C. Governance of Agreement

7. Scope of Work

The Company shall be the lead Party for performance and completion of work under this Agreement. However, the Parties will endeavor to meet regularly to monitor the progress of work under this Agreement.

8. Environmental and Permitting Budgets

The Board of MPWMD shall approve a joint budget each quarter for phases of the Environmental and Permitting Development expenditures. To the extent that additional funds are required to complete work authorized by this Agreement the Parties will meet to discuss appropriate modifications to the budget, and neither Party shall unreasonably refuse to modify the budget as necessary to complete work authorized by this Agreement. The Company and MPWMD shall meet at least quarterly to review the budget and provide updates and modifications to the budget on a timely basis.

D. Company's Obligations

9. Day-to-Day Management

The Company shall provide day-to-day management of the work authorized by this Agreement, subject to applicable terms and conditions herein. The Company shall serve as the contracting authority for the Parties for and, with MPWMD's concurrence, contract directly with all professionals, firms, and outside contractors.

10. Payment

The Company shall pay for consultants, contractors, and other environmental and permitting-related costs in accordance with the terms of this Agreement. The Company shall submit monthly invoices to MPWMD which will include back-up documentation substantiating the costs incurred by the Company.

11. Other Development Expenditures

Before final design and construction proceeds, the budget on page 3 of the Company's Statement of Qualifications submitted February 15, 2013 indicates that the Company expects to expend an additional \$1.5 million for technical studies and preliminary design, as well as \$2.2 million for rent, insurance, compensation, and consultants. The Company will provide monthly reports to MPWMD demonstrating continuing progress and expenditures for such other development expenses.

12. Definitive Agreements

The Company will endeavor to complete, within 120 days of the date of this Agreement, execution of definitive agreements for:

- the purchase of the tank farm property and easements for use of Dynegy facilities
- formation of the Salinas municipal utility
- MOU or Term Sheet for Power Sales Agreement to CCWRP from Salinas
- MOU or Term Sheet for wholesale Power Purchase Agreement by Salinas from energy provider
- Development agreement with data center campus developer

E. MPWMD's Obligations

13. Payment of Invoices

MPWMD shall have the right to review and confirm that the invoices submitted by the Company are in conformance with the terms of this Agreement. Payments will be made within 30 days of receipt of invoice. If during the review of invoice MPWMD disputes any payments as not being in accordance with this Agreement, the MRWMD will notify the Company within the 30 days to resolve any disputes.

14. Milestones

MPWMD shall have the option at any time to suspend or cease payments under this Agreement if any of the following milestones are not met:

- a) Continued progress and expenditure on other development expenses described under Section D.11, above;
- b) Designation of a federal NEPA lead agency within 60 days of submittal of an application and detailed project description to its CEQA Lead Agency;
- c) Receipt within 60 days of the date of this Agreement of a "stand-still agreement" deposit of at least \$250,000 from a developer for the proposed data center campus for its exclusive right to perform due diligence, provided the deposit is non-refundable and the Company has delivered to MPWMD a copy of its agreement with the developer for the due diligence period;
- d) Demonstration within 120 days of the date of this Agreement of execution of definitive agreements for:
 - the purchase of the tank farm property and easements for use of Dynegy facilities
 - formation of the Salinas municipal utility
 - MOU or Term Sheet for Power Sales Agreement to CCWRP from Salinas
 - MOU or Term Sheet for wholesale Power Purchase Agreement by Salinas from energy provider
 - Development agreement with data center campus developer
- e) Demonstration within 160 days of the date of this Agreement of at least \$4 million of funds are available to the Company for technical studies and preliminary design, rent, insurance, compensation, and consultants.

F. Term and Termination

15. Term

This Agreement shall remain in force and effect for two years. Before final design and construction proceeds, and in no case later than within thirty (30) days after the first anniversary of the date of adoption of this Agreement, the Parties shall meet to

decide whether to extend this Agreement. Any extension of this Agreement shall be in writing and on mutually acceptable terms and conditions.

G. Events of Default; Dispute Resolution

16. Event of Default

The failure of a Party to comply with any provision of this Agreement that has a material and adverse effect on the other Party, except to the extent caused by a breach of this Agreement by the other Party, shall constitute an Event of Default under this Agreement; provided, however, that the defaulting Party shall first have a period of thirty (30) days following receipt of notice from the other Party of such failure to comply to cure such failure, or if such cure cannot be effected within such thirty (30) day period, such period shall extend for a total of one hundred eighty (180) days, so long as the defaulting Party is diligently trying to cure such failure throughout such period.

17. Dispute Resolution

Staffs of both Parties shall meet and use their best efforts to settle any dispute, claim, question or disagreement (a "Dispute") arising from or relating to this Agreement. To that end, staffs of both Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If the Parties do not reach such a solution within a period of thirty (30) days after the first meeting of the staff regarding a Dispute, then the Parties shall pursue non-binding mediation to be completed within sixty (60) days after the first meeting of the Parties regarding the Dispute. If the Parties do not settle the Dispute within the sixty (60) day period, either Party may pursue any and all available legal and equitable remedies.

H. Miscellaneous.

18. Force Majeure

Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations (other than payment obligations) under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, actions of legislative, judicial, executive or regulatory government bodies or other cause, without fault and beyond the reasonable control of such Party. If any such events shall occur, the time for performance by either Party of any of its obligations hereunder shall be extended by the Parties for the period of time that such events prevented such performance. Upon the occurrence of an event of Force Majeure, the affected Party shall: (i) promptly notify the other Party of such Force Majeure event, (ii) provide reasonable details relating to such Force Majeure event and (iii) implement mitigation measures to the extent commercially reasonable.

19. Indemnities

- a. MPWMD Indemnity. MPWMD shall fully indemnify the Company and its respective directors, employees and agents against, and hold completely free and harmless from, any Losses, that may arise from (i) any grossly negligent act or omission of MPWMD related to the environmental and permitting activities,

except for costs, expenses, claims, demands, judgments, losses, injuries and/or liability arising from any grossly negligent act or omission of the Company related to the environmental and permitting activities or (ii) any claim made by a MPWMD employee specifically retained to provide services with respect to the environmental and permitting activities.

- b. **Company Indemnity.** The Company shall fully indemnify MPWMD and its respective directors, employees and agents against, and hold completely free and harmless from, any Losses, that may arise from (i) any grossly negligent act or omission of the Company related to the environmental and permitting activities, except for costs, expenses, claims, demands, judgments, losses, injuries and/or liability arising from any grossly negligent act or omission of MPWMD related to the environmental and permitting activities or (ii) any claim made by a Company employee specifically retained to provide services with respect to the environmental and permitting activities.

20. Insurance/Self Insurance

The Parties are either insured or self-insured as to any requirements under this Agreement. No policies or bonds are required of either party as to any provisions of this Agreement.

21. Notices

All notices to MPWMD required or permitted under this Agreement shall be in writing and shall be deemed delivered (i) when delivered in person, (ii) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (iii) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery; (iv) upon receipt of a confirmed transmission, if sent by telex, telecopy or facsimile transmission; or (v) via electronic mail provided the sender's system is capable of creating a written record of such notice and its receipt in each case to the parties at the following addresses or to other such addresses as may be furnished in writing by one party to the other:

Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 93940
Attention: General Manager

All notices to the Company required or permitted under this Agreement shall be in writing and shall be deemed delivered (i) when delivered in person, (ii) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (iii) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery; (iv) upon receipt of a confirmed transmission, if sent by telex, telecopy or facsimile transmission; or (v) via electronic mail provided the sender's system is capable of creating a written record of such notice and its receipt in each case to the parties at the

following addresses or to other such addresses as may be furnished in writing by one party to the other:

DeepWater Desal LLC
7532 Sandholdt Rd, #6
Moss Landing, CA 95039
Attention: Brent Constantz

22. Successors And Assigns

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, representatives, successors and permitted assigns.

23. Further Acts and Assurances

The Parties agree to execute, acknowledge and deliver any and all additional papers, documents and other assurances, and shall perform any and all acts and things reasonably necessary, in connection with the performance of the obligations hereunder and to carry out the intent of the Parties.

24. Captions

The captions in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of this Agreement, nor in any way affects this Agreement. Words of any gender in this Agreement shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense so requires.

25. Severability

Should it be found that any part of this Agreement is illegal or unenforceable, such part or parts of this Agreement shall be of no force nor effect and this Agreement shall be treated as if such part or parts had not been inserted.

26. Entire Agreement

All previous negotiations had between the Parties hereto and/or their agents or representatives with respect to this Agreement are merged herein and this Agreement alone fully and completely expresses the Parties' rights and obligations.

27. Modifications In Writing

This Agreement shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors in interest.

28. Interpretation

Each of the Parties hereby waives any provisions of law to the effect that an ambiguity in a contract or agreement should be interpreted against the Party that drafted the contract, agreement or instrument.

29. Governing Law

This Contract shall be governed by and construed according to the laws of California.

30. No Third-Party Beneficiaries

Nothing in this Agreement is intended to create any third-party beneficiaries to the Agreement, and no person or entity other than the Parties, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Agreement.

31. Assignment

Neither Party may assign its interest in this Agreement without the prior written consent of the other Party.

32. Representation and Warranties

No representations or warranties are made or have been relied upon by either Party other than those expressly set forth herein, if any.

WHEREFORE, this Cost Sharing Agreement was executed by the parties on the date first above written.

COMPANY

DEEPWATER DESAL, LLC

By: _____
Brent R. Constantz, CEO & Managing Member

MPWMD

MONTEREY PENINSULA WATER MANAGEMENT
DISTRICT,

By: _____
David Pendergrass, Chair
MPWMD Board of Directors