

EXHIBIT 5-A

**DRAFT MRWPCA-MPWMD
GROUNDWATER REPLENISHMENT PROJECT**

COST SHARING AGREEMENT

This Cost Sharing Agreement is entered into as of May __, 2013, by and between the Monterey Regional Water Pollution Control Agency, a joint powers authority (“MRWPCA”) and the Monterey Peninsula Water Management District, a California special act district (“MPWMD”), collectively the “Parties”, based upon the following facts, intentions and understandings of the Parties.

**I.
BACKGROUND**

A. The Agency was formed as a Joint Powers Agency by a Joint Exercise of Powers Agreement for the Monterey Regional Water Pollution Control Agency, effective as of June 29, 1979. Member entities formed the Agency in order to seek joint solutions to their wastewater treatment needs. The Agency owns and operates the Regional Treatment Plant (“RTP”), 25 wastewater pump stations, a land and ocean outfall. From the RTP, MRWPCA produces tertiary treated wastewater for agriculture irrigation. MRWPCA could treat waste waters through advanced treatment to provide for additional reuse.

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. The parties believe that an additional increment of water supply should be generated for the benefit of Cal Am’s Monterey District customers, many of whom are within the service areas of MPWMD and MRWPCA, by conveying advanced treated wastewater from the MRWPCA to the Seaside Basin, where it could be injected for storage and subsequent recovery (“GWR Project”).

D. The Parties and California American Water Company jointly entered into a Groundwater Replenishment Project Planning Term Sheet And Memorandum of Understanding To Negotiate In Good Faith (“GWR MOU”) on April 20, 2012 to, among other things, enable planning and environmental evaluation of a groundwater replenishment project by the following:

- to commit themselves to evaluate the ways in which a groundwater replenishment project could be effectively accomplished;

- to commit themselves to negotiate in good faith to reach agreement on such a project, should it be deemed viable;
- for MRWPCA to commit to act as lead agency to achieve California Environmental Quality Act (“CEQA”) compliance for such a project, should it be deemed viable;
- for MPWMD to assist MRWPCA in providing the necessary financial support for the foregoing planning and CEQA compliance activities; and
- to identify non-binding preliminary terms of a GWR project agreement, which will assist in focusing the development of a GWR project responsive to the Parties’ capabilities and needs.

E. Since 2005, MRWPCA has incurred costs of about \$2,698,265 for conceptual planning for a Groundwater Replenishment Project.

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. Planning and Development Costs Defined

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

- a. CEQA
- b. Feasibility Review
- c. Facilities Planning
- d. Monitoring Well Construction and Testing
- e. Pilot Treatment and Pilot Injection
- f. Public Outreach

2. Financing of GWR Project Planning and Development Costs

The Parties estimate that the costs described in Section 1., immediately above, will total \$6,957,352 as shown in the budget in Appendix A. Beginning FY2013-14, MPWMD shall pay seventy-five percent (75%) of such costs, and MRWPCA shall pay twenty-five percent (25%) of such costs. Seventy-five percent (75%) of full employee costs (salary and benefits) incurred by MRWPCA for up to two (2) of its employees’ allocable time committed to tasks falling within the components described in Section 1., immediately above, shall be paid (reimbursed) by MPWMD. Prior to FY2013-14, such costs are shared fifty percent (50%) by each Party. Other employee costs incurred by either Party and allocable to the GWR Project will be reimbursed from the proceeds of the permanent financing pursuant to any reimbursement resolution adopted by MPWMD or MRWPCA.

3. **Grants and Loans**

MRWPCA 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 MRWPCA and credit the GWR Project ledger as received. Such receipts will be deemed to offset project costs.

4. **Reimbursement**

MRWPCA 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. MPWMD will provide a quarterly report to MRWPCA indicating the status of available funds.

B. Ownership

6. **System Ownership**

MRWPCA shall hold title to all GWR Project facilities to be constructed under this Agreement.

C. Governance of Agreement

7. **Scope of Work**

MRWPCA 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. **GWR Project Budgets**

The Boards of MRWPCA and MPWMD shall approve a joint budget each fiscal year for phases of the GWR Project ("GWR Project Budgets".) 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 GWR Project Budget, and neither Party shall unreasonably refuse to modify the GWR Project Budget as necessary to complete work authorized by this Agreement. MRWPCA shall meet at least quarterly to review the budget and provide MPWMD updates and modifications to the budget on a timely basis.

D. MRWPCA's Obligations

9. **Day-to-Day Management**

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

10. Payment

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

11. Purified Water Sales Agreement

Before final design and construction proceeds, MRWPCA shall work jointly with MPWMD to develop a Recycled Water Sales Agreement under which MRWPCA will deliver recycled water to MPWMD for storage in the Seaside Groundwater Basin. Such agreement will address quantity delivered, cost, quality, Watermaster storage and recovery agreement, metering and measurement of flows, invoicing, and other matters.

E. MPWMD's Obligations

12. Payment of Invoices

MPWMD shall have the right to review and confirm that the invoices submitted by the MRWPCA 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 MRWPCA within the 30 days to resolve any disputes.

13. Wholesale Water Purchase Agreement

Before final design and construction proceeds, MPWMD shall work jointly with California American Water Company to develop a Wholesale Water Purchase Agreement under which MPWMD will deliver potable water to California American from storage in the Seaside Groundwater Basin. Such agreement will address quantity delivered, cost, minimum annual purchase amounts, water quality, metering and measurement of flows, invoicing, and other matters.

F. Term and Termination

14. Term

This Agreement shall remain in force and effect for five years. Before final design and construction proceeds, and in no case later than within thirty (30) days after the fourth 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

15. 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.

16. 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.

17. 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.

18. Indemnities

- a. **MPWMD Indemnity.** MPWMD shall fully indemnify MRWPCA and its respective directors, , employees and agents against, and hold completely free and harmless from, any cost, expense, claim, demand, judgment, loss, injury and/or liability of any kind or nature, including personal or bodily injury, death or property damage ("Losses"), that may arise from (i) any grossly negligent act or omission of MPWMD related to construction of the GWR Project or (ii) any claim made by a MPWMD employee specifically retained to provide services with respect to the facilities.
- b. **MRWPCA Indemnity.** MRWPCA 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 MRWPCA related to the GWR Project construction, management, operation, maintenance or repair, except for costs, expenses, claims, demands, judgments, losses, injuries and/or liability arising from any grossly negligent act or omission of MPWMD related to construction of the GWR Project or (ii) any claim made by a MRWPCA employee specifically retained to provide services with respect to the GWR Project.

19. 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.

20. 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 MRWPCA 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 Regional Water Pollution Control Agency
5 Harris Court, Building D
Monterey, CA 93940
Attention: General Manager

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. Governing Law

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

29. 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.

30. Assignment

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

31. 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.

MRWPCA

MONTEREY REGIONAL WATER POLLUTION
CONTROL AGENCY,

By: _____
Dennis Allion, Board Chair
MRWPCA Board of Directors

MPWMD

MONTEREY PENINSULA WATER MANAGEMENT
DISTRICT,

By: _____
David Pendergrass, Chair
MPWMD Board of Directors

APPENDIX A.

Project Planning and Development Budget

Period	Budget	Less Grants	MPWMD Share	MRWPCA Share
April 1, 2012 – June 30, 2012	\$332,352	\$0	\$166,176	\$166,176
FY 2012-13	\$775,000	\$75,000	\$350,000	\$350,000
FY 2013-14	\$3,800,000	\$150,000	\$2,737,500	\$912,500
FY 2014-15	\$2,050,000	\$0	\$1,537,500	\$512,500
Total	\$6,957,352	\$225,000	\$4,791,176	\$1,941,176

Note: Prior to April 1, 2012 MRWPCA incurred costs of \$1,948,238 for GWR conceptual planning activities.

DRAFT