

EXHIBIT 3-A

CONFIDENTIAL AND PRIVILEGED DRAFT

**MRWPCA-MPWMD-CAL AM
GROUNDWATER REPLENISHMENT PROJECT
PLANNING TERM SHEET AND
MEMORANDUM OF UNDERSTANDING TO NEGOTIATE IN GOOD FAITH**

This Groundwater Replenishment Project Planning Term Sheet And Memorandum of Understanding To Negotiate In Good Faith ("GWR MOU") is entered into as of _____, 2012, by and between the Monterey Regional Water Pollution Control Agency, a joint powers authority ("MRWPCA"), the Monterey Peninsula Water Management District, a California special act district ("MPWMD"), and the California American Water Company ("Cal Am"), a CPUC regulated water utility, collectively the "Parties", based upon the following facts, intentions and understandings of the Parties.

I.
BACKGROUND

A. MRWPCA owns and operates a wastewater collection and treatment system in northern Monterey County, including the Regional Treatment Plant ("RTP") and the associated ocean outfall (Outfall). From the RTP, MRWPCA produces treated wastewater that has the potential for re-use;

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. Cal Am is a CPUC regulated water company that serves retail customers in the Monterey Peninsula. Cal Am's access to its largest source of water supply, the Carmel River, is being significantly reduced by order of the State Water Resources Control Board, generating the need for additional sources of water to serve Cal Am's Monterey Peninsula customers. CPUC approval for certain aspects of such additional water supplies is required.

D. The Regional Desalination Project was intended to fulfill this need for additional water supplies. However, Cal Am has withdrawn from participation in that project and is seeking alternative approaches to meet its needs.

E. The Seaside groundwater basin (“Seaside Basin”) is in a state of overdraft, and rights to water and pumping thereof have been adjudicated by the Monterey Superior Court. The Seaside Basin is governed by a Watermaster appointed by the Court.

F. MPWMD and Cal Am have an existing aquifer storage and recovery project (ASR) which involves the injection of water into the Seaside Basin, and its recovery for the benefit of Cal Am. This initial phase (ASR Phase 1) uses water diverted from the Carmel River, which is injected and extracted using two existing wells.

G. MRWPCA treats wastewater at the RTP creating a potential source of water supply.

H. The parties believe that an additional increment of water supply should be generated for the benefit of Cal Am and its 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 by Cal Am.

I. There would be substantial public benefits of such a Groundwater Replenishment Project, including but not limited to:

- Drought resistant element of water supply portfolio;
- Seaside groundwater aquifer enhancement;
- Cost-effective water supply
- Re-use of water otherwise discharged to the ocean
- Enhanced quality of the discharge
- Diversification of Cal Am’s water supply portfolio

J. The Parties intend by this GWR MOU to 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 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, subject to Recital M, below; 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.

K. Except as set forth in Recital J above, the terms set forth in this GWR MOU are the Parties’ preliminary concept of terms that may be included in a final project agreement or

agreements (“GWR Agreement”). They are not intended to be, nor should they be considered as, binding on the Parties.

L. None of the Parties intends by this GWR MOU to commit itself, or the other Parties, to a particular course of action, other than as set forth in Recital J above. The Parties reserve their discretion to evaluate and determine project impacts, alternatives and mitigation measures, including but not limited to the ability to choose the “No Project” alternative, under CEQA.

M. MPWMD financial support for GWR described in Recital J above is contingent upon successful implementation of a new revenue collection mechanism during the 2012-13 fiscal year.

II. BINDING TERMS REGARDING PROCESS TO EVALUATE AND IF FEASIBLE DEVELOP A GROUNDWATER REPLENISHMENT PROJECT

1. Background Recitals.

The above-stated background recitals are incorporated herein by this reference.

2. MRWPCA

- A. MRWPCA is anticipated to be the source of the recycled water supply which is the predicate for this project. MRWPCA would convey that water to the Seaside Basin, and inject it into the aquifer, thus making an additional source of water available for use by Cal Am and its customers.
- B. MRWPCA will in good faith commit to evaluate its resources and capabilities with respect to the feasibility of performing the foregoing functions.
- C. In the event that a feasible project is identified, MRWPCA will act as CEQA lead agency, and will prepare or have prepared an environmental document pursuant to CEQA to evaluate the environmental impacts of such a groundwater replenishment project. MRWPCA will adopt or certify such environmental document unless MRWPCA chooses the “No Project” alternative, in which event certification is not required. MRWPCA will use funding provided by MPWMD for this effort.
- D. MRWPCA will negotiate in good faith with the other Parties to develop a GWR Agreement acceptable to all Parties, which agreement will be consistent with the above-described environmental document. The Parties’ goal is that such agreement will be complete and fully executed in a timeframe which will enable the GWR to be on-line such that water can be made available to CalAm on the schedule set forth by the SWRCB.
- E. MRWPCA expressly retains its discretion with respect to whether it will enter into a GWR Agreement, and on what terms; as well as its discretion to consider any and all

alternatives, including the “no project” alternative, and any and all mitigation measures, and to make the requisite findings, in the above-referenced CEQA process.

3. MPWMD

- A. MPWMD will provide matching funding for MRWPCA and MPWMD GWR evaluation, planning, pre-design, and environmental review costs for the GWR derived from its new revenue collection mechanism implemented for the 2012-13 fiscal year. The Parties anticipate that MPWMD will contribute 50% of MRWPCA’s GWR related costs, estimated to be \$1,036,550 in FY 2012-13 and \$1,469,200 in FY 2013-14. ***((Note - Dave, is there a way to include some general language equivalent to the following sentence that you deleted?))***
- B. If a viable project is identified by the Parties, MPWMD will negotiate in good faith with the other Parties to develop a GWR Agreement acceptable to all Parties, which agreement will be consistent with the above- described environmental document. The Parties’ goal is that such agreement will be complete and fully executed in a timeframe which will enable the GWR to be on-line such that water can be made available to Cal Am on the schedule set forth by the SWRCB.
- C. In the event that a GWR Agreement is executed, MPWMD will undertake the permanent financing of GWR with long-term debt, secured by either revenues of MPWMD or payments to be received under a water purchase agreement with Cal Am, or both. Proceeds of these revenues, or either of them, will be used to reimburse MRWPCA for its past out-of-pocket contributions of MRWPCA for GWR (any unreimbursed costs including the MRWPCA investment before execution of this MOA.)
- D. MPWMD expressly retains its discretion with respect to whether it will enter into a GWR Agreement, and on what terms; as well as its discretion to consider the CEQA document in a manner fully consistent with its role as a responsible agency under CEQA.

4. CAL AM

- A. If a viable project is identified by the Parties, Cal Am will negotiate in good faith with the other Parties to develop a GWR Agreement acceptable to all Parties, which agreement will be consistent with the above-described environmental document. The Parties’ goal is that such agreement will be complete and fully executed in a timeframe which will enable the GWR to be on-line such that water can be made available to Cal Am on the schedule set forth by the SWRCB.
- B. Subject to CPUC approval at such time the GWR Agreement is negotiated, Cal Am will enter into a water purchase agreement with MPWMD, with minimum annual purchase obligations of water at a price sufficient to pay the annual costs of debt and

the costs of the GWR project, including without limitation operations, maintenance, repair, replacement, regulatory compliance and administration costs.

- C. As the CPUC regulated entity, Cal Am will act as the lead with respect to the CPUC, including but not limited to obtaining the approvals required by that agency. Cal Am has informed the Parties that the CPUC's jurisdiction over the GWR is limited to rate-making (approval of any water purchase agreement), which is not subject to CEQA.
- D. Cal Am will bear its own costs with respect to all of its efforts in furtherance of realizing a GWR.
- E. Cal Am hereby agrees to defend, hold harmless and indemnify MRWPCA and MPWMD with respect to any claims or litigation regarding this MOU, including but not limited to litigation under CEQA or arising in relationship to the Coastal and/or Regional Water Project.

5. Good Faith Commitment

In order to explore the potential public and private benefits of this project, and to ensure that each Party's efforts in furtherance of realizing such a project are well spent, the Parties hereby make a good faith commitment to pursue development of such a GWR, in compliance with all applicable laws.

6. Term and Termination

- A. This GWR MOU shall expire upon the earlier of (1) full execution of a GWR Agreement, or (2) upon written agreement of the Parties to terminate.
- B. Upon thirty days advance notice to all Parties, and upon the withdrawing Party's good faith determination that further participation is not feasible for any reason, any Party may withdraw from this MOU. If two Parties withdraw, this MOU is terminated.
- C. Any obligation to pay survives termination until such payment is made in full.

III. NON -BINDING PRELIMINARY TERMS

The provisions in this Section III set forth the Parties' preliminary understanding that may be included in a final project agreement or agreements ("GWR Agreement".) These provisions are not intended to be, nor should they be considered as, binding on the Parties. Each Party expressly retains discretion with respect to whether it will enter into a GWR Agreement, or on what terms.

1. The Groundwater Replenishment Project ("GWR") is intended by the Parties to provide in the range of 2700 to 3300 AF of advanced treated wastewater (Replenishment Water) that can be made available, conveyed to the Seaside Basin and injected therein using new wells, by MRWPCA. MRWPCA will design, construct, own and operate the facilities to convey the water from the RTP and inject it into the Basin.

2. Upon payment by MPMWD to MRWPCA as set forth below, MPWMD shall take title to the Replenishment Water that has been injected into the aquifer. MPMWD will make the Replenishment Water available for purchase by Cal Am for the purpose of serving CalAm's retail water customers in the Monterey Peninsula area.

3. Upon permanent financing, MPWMD will pay to MRWPCA the full amount of MRWPCA's costs to design, construct, obtain regulatory approvals, treat, deliver and inject the Replenishment Water. The commodity cost for the Replenishment Water shall recover at minimum all costs associated with GWR operation, maintenance, repair, replacement and administration, including regulatory compliance..

4. MRWPCA, MPMWD, and Cal Am shall coordinate the scheduling of injection of recycled water, Carmel River water, and any other water.

5. Cal Am shall enter into a "take or pay" contract to purchase the Replenishment Water from MPWMD. This contract will inter alia promptly reimburse MPWMD for its annual cost of debt service, Replenishment Water payments to MRWPCA for operations and maintenance, reimburse MRWPCA for any of its project development costs not previously reimbursed by MPWMD, as well as for MPWMD's costs.

6. Brine Disposal. Disposal of brine from the GWR treatment process will be done through the Outfall. This is anticipated to create a benefit for any CalAm desal project, due to dilution rates. MRWPCA and CalAm anticipate the possibility that they will need to collaborate on use of the Outfall for brine disposal for any desal project CalAm may undertake.

7. MRWPCA and MPWMD will jointly negotiate a Storage and Recovery Agreement with the Seaside Basin Watermaster.

8. CPUC Approvals

9. Coordination with others
10. Other elements of agreement.

The parties anticipate that terms addressing the following topics will also be needed:

- Litigation; Cooperation in Litigation.
- Regulatory Compliance
- Additional Acts.
- Force Majeure.
- No Assignment.
- No Third Party Beneficiaries.
- Representations and Warranties.
- Dispute Resolution
- No Partnership, Joint venture or JPA.
- Default, Cure and Remedies.
- Attorneys Fees.
- Notices.
- Miscellaneous Provisions.

The Parties re-confirm that neither a GWR Agreement, nor any replenishment project, can proceed unless and until the Parties have negotiated, executed and delivered mutually acceptable agreements based upon information produced from the CEQA environmental review process and on other public review and hearing processes, and subject to all applicable governmental approvals. The Parties intend by this GWR MOU to inform and focus the work necessary to develop and review a water transfer program, not to pre-determine what that program may be.

WHEREFORE, this GWR MOU was executed by the parties on the date first above written.

MRWPCA

MONTEREY REGIONAL WATER POLLUTION
CONTROL AGENCY,

By: _____

Name: _____

Title: _____

Date Signed: _____

MPWMD

By: _____

General Manager

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Page 8 of 8

Date Signed: _____

APPROVED AS TO FORM:

City Attorney

By: _____

Resolution No. _____

Date of Resolution: _____

CAL AM

CALIFORNIA AMERICAN WATER COMPANY,

By: _____

Name: _____

Title: _____

Date Signed: _____

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