

## CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-BANK)

### POST BOND ISSUANCE REQUEST STAFF REPORT

#### REQUEST

The California Independent System Operator Corporation (Corporation, Borrower) has presented written requests to amend certain bond documents, for the California Infrastructure and Economic Development Bank (I-Bank) Revenue Bonds (CAISO Project) 2008 Series A, issued June 19, 2008 (Series 2008A Bonds) and 2009 Series A, issued July 22, 2009, (Series 2009A Bonds, and together with the Series 2008A Bonds, the Bonds) to modify certain definitions in such documents. The Corporation also requests the I-Bank, as issuer of the Bonds and as "tax payer" for IRS purposes, assist the Borrower in completing certain remediation actions with the U.S. Internal Revenue Service (IRS) to remediate tax consequences caused by the 2011 sale of bond-financed equipment (Deemed Reissuance).

#### BACKGROUND

On May 20, 2008, the I-Bank Board approved Resolution 08-14 authorizing the issuance of tax-exempt 501(c)(3) bonds in an aggregate amount not to exceed \$206,000,000 to refund the outstanding I-Bank Variable Rate Demand Revenue Bonds issued on behalf of the Corporation in 2000, 2004 and 2007 and to finance capital projects including computer hardware and software, office equipment, and construction planning and site preparation for development of a new Corporation headquarters facility in Folsom.

On June 23, 2009, the I-Bank Board approved Resolution 09-24 authorizing the issuance of tax-exempt 501 (c)(3) bonds in an aggregate amount not to exceed \$210,000,000 to finance (i) the construction and development of the office headquarters complex in Folsom, (ii) the acquisition and development of computer hardware and software systems, and (iii) the acquisition of office equipment.

The Borrower is a nonprofit public benefit corporation organized to ensure the efficient use and reliable operation of the electric transmission grid within most of the State of California. The Corporation manages the safe and reliable flow of electricity on California's high-voltage power grid by acting as the impartial link between entities that generate electrical power and the entities that provide electricity to customers.

#### NEED FOR ACTION

Accepted practice in connection with the issuance of tax exempt bonds is to condition certain actions of the borrowers of bond proceeds upon the borrower obtaining a favorable tax opinion, but to allow the borrower to obtain such an opinion from any nationally recognized bond counsel. However, the tax certificates for the 2008A Bonds and the 2009A Bonds (each a Tax Certificate, and collectively the Tax Certificates) identify a particular law firm (the Prior Bond Counsel) in the definition of "Bond Counsel." The use of this defined term in certain provisions of the Tax Certificates caused the unintended consequence of limiting the Borrower's ability to rely on the advice of tax counsel other than that of the law firm identified in the definition. The

Borrower wishes to have the flexibility to seek advice and opinions from nationally recognized bond counsel other than the Prior Bond Counsel. Thus, the Borrower is requesting amendments to each Tax Certificate that would substitute "nationally recognized bond counsel" for "Bond Counsel" in several sections in each of the Tax Certificates including in the Exhibit B attached thereto (Amendment Request).

On May 3, 2011 the Borrower sold certain equipment that was financed or refinanced by the Series 2008A bonds. According to the Borrower, the Prior Bond Counsel failed to advise the Borrower of the need to file with the IRS, a Form 8038 in connection with the sale of tax-exempt bond-financed equipment, thus preventing the Borrower from successfully completing the steps necessary for complete remediation of the deemed reissuance of the bonds (Deemed Reissuance). Consequently, upon recently learning that IRS regulations required the filing of a Form 8038 within 90 days of the sale of the equipment, Borrower sought representation by another bond counsel (the New Bond Counsel). According to the advice given to the Borrower by the New Bond Counsel, the Borrower may be able to remediate the Deemed Reissuance upon taking certain actions including sending a request to the IRS to allow for the late filing of a Form 8038. Hence, the Borrower is asking the I-Bank, as issuer of the Bonds and as the "tax payer" for IRS purposes, to assist it in successfully completing the remediation of the Deemed Reissuance. Such assistance will initially involve the execution, by the I-Bank, of a letter to the IRS requesting permission for the filing of the Form 8038 late in connection with the May 3, 2011 deemed reissuance of the Series 2008A Bonds, but may require additional steps as required by the IRS (Remediation Request, and together with the Amendment Request, the Borrower Requests).

#### **BOARD DELEGATION AUTHORIZATION**

I-Bank Board Resolution 12-08 delegates to the Executive Director, in connection with any proposed amendment of bond related documents (an "Amendment"), the authority to execute and deliver all agreements, contracts, certificates, orders, appointments, notices, waivers, approvals, acknowledgements, consents, written directions, instruments and other documents ("I-Bank Documents") necessary or convenient to effect such Amendment; provided that, the I-Bank receives an opinion of counsel to the effect (1) that the Amendment is in accordance with the associated transaction documents and (2) where bonds were issued as tax-exempt bonds, that the Amendment will not adversely affect the tax-exempt status of interest on the bonds.

Further, Resolution 12-08 delegates to the Executive Director the authority to take actions to effect the consummation of transactions or events contemplated in the original approving documents for I-Bank bonds. The Tax Certificates include provisions that contemplate various actions to be taken by the I-Bank, including interactions with the IRS, in connection with preserving the tax exempt status of the Bonds.

#### **LEGAL REVIEW**

The I-Bank's General Counsel has reviewed the Borrower Requests and the documents associated with them and has determined that they satisfy the applicable requirements of Resolution 12-08.

**STAFF RECOMMENDATION**

Staff recommends that the Borrower Requests be approved by the Executive Director.

**ATTACHMENTS**

Attachment 1	Written Request for Amendment of the 2008A Bonds
Attachment 2	Written Request for Amendment of the 2009A Bonds
Attachment 3	IRS Letter
Attachment 4	Form 8038
Attachment 5	Schedule for 8038
Attachment 6	Form of Amendment of Tax Certificate

California Infrastructure and Economic Development Bank Revenue Bonds  
Series 2008A and 2009A (California Independent System Operator Corporation Project)

Date of Report: October 12, 2012

Prepared by: Elizabeth Hess

Prepared by: Elizabeth Hess 10-12-12  
Elizabeth Hess, Public Finance Officer Date

Reviewed by: Joel Tokimitsu 10-12-12  
Joel Tokimitsu, Bond Unit Manager Date  
Comments:

Reviewed by: Marilyn Munoz 10/12/12  
Marilyn Munoz, General Counsel Date  
Comments:

- The amendment request falls within the authority delegated to the Executive Director. I-Bank Board consideration and approval is not required.
- The amendment request does not fall within the delegated authority of the I-Bank Executive Director, and Board consideration and approval of the request is required.

Reviewed by: R. Cristia-Plant 10/12/12  
Roma Cristia-Plant, Assistant Executive Director Date  
Comments:

Approved by: Stanton Hazelroth 10-12-12  
Stanton Hazelroth, Executive Director Date  
Comments:

**Attachment 1 – Written Request for Amendment of the 2008A Bonds**



## REQUEST FOR AMENDMENT OR OTHER POST-BOND ISSUANCE ACTIONS

In order to consider post-issuance modifications, substitutions, redemptions or other actions related to I-Bank bond financings (a "Request"), I-Bank staff must have complete information regarding the nature of the request. Upon receipt of the information listed below, I-Bank Bond Unit staff will provide a single point of contact and prepare a list of issues, further questions or additional information needed so that the applicant can address them in an organized fashion.

The I-Bank Bond Unit staffer assigned to the Request will also contact the I-Bank Legal Unit for a determination as to whether the Request falls within the scope of authority delegated from the I-Bank Board to the Executive Director and his assignees (the "Delegation"). Please note that I-Bank staff reserves the right to elect to present any Request to the I-Bank Board for its approval regardless of the Delegation authority. Upon receipt of a Delegation determination from the I-Bank Legal Unit, the Bond Unit staffer will advise the applicant of the determination and the next steps in the process.

***The Request for Amendment or Other Post-Bond Issuance Actions may be submitted via email.***

1. Date of Request: **October 1, 2012**
2. Name/Title, Date, of Bond Issue

**California Infrastructure and Economic Development Bank Revenue Bonds (California Independent System Operator Corporation Project) 2008 Series A, issued June 19, 2008 in the aggregate principal amount of \$196,970,000 (the "Bonds").**

3. Description of why amendment(s), substitution(s) or other action(s) is/are needed/requested: (e.g., Issues relating to addition of credit support; substituting LOC provider, lender requirement to update financial covenants)

**In connection with the issuance of the Bonds, the I-Bank and the California Independent System Operator Corporation (the "Borrower") executed and delivered a Tax Certificate, dated June 19, 2008 (the "Tax Certificate"), including Exhibit B, Borrower's Tax Certificate, also dated June 19, 2008 ("Exhibit B").**

**Certain sections of the Tax Certificate (including Exhibit B) provide that specified future actions may be taken upon the receipt of an opinion of "Bond Counsel" or after consultation with "Bond Counsel". "Bond Counsel" is defined to mean Stradling Yocca Carlson & Rauth, P.C., the nationally recognized bond counsel firm that delivered its approving opinion in connection with the June 19, 2008 issuance of the Bonds.**

**Certain other sections of the Tax Certificate (including Exhibit B) provide that specified future actions may be taken upon the receipt of an opinion of any nationally-recognized bond counsel or after consultation with any nationally-recognized bond counsel. Some of the actions which require an opinion of, or consultation with, "Bond Counsel" overlap with actions which require an opinion of, or consultation with, any nationally-recognized bond counsel.**

The Borrower proposes to amend the Tax Certificate (including Exhibit B) such that required post-issuance opinions or consultations could be obtained from any nationally-recognized bond counsel.

4. Proposed Timeline

As soon as possible. The Borrower is prepared to execute the proposed amendment as soon as the I-Bank is able.

5. Identify the section numbers and the names of the original transaction documents that govern or relate to the Request. Please provide copies (preferably in an electronic format) of such documents.

- Section 6.3 of the Tax Certificate permits amendments to the Tax Certificate (including Exhibit B) upon agreement of the I-Bank and the Borrower, supported by an approving opinion from nationally-recognized bond counsel. The Borrower proposes to rely upon Section 6.3 of the Tax Certificate to amend the following Sections of the Tax Certificate (including Exhibit B):
  - Tax Certificate: Sections 1.4 and 3.18
  - Exhibit B: Sections 1.3, 3.3.8, 4.3
- Loan Agreement between the I-Bank and the Borrower, dated as of June 1, 2008 (the "Loan Agreement"). The Borrower believes that the proposed amendments to the Tax Certificate (including Exhibit B) also are supported by Section 5.6(d) of the Loan Agreement. Section 5.6(d) authorizes the Borrower to revise any action required by the Tax Certificate by delivering to the I-Bank and the Trustee an opinion of nationally-recognized bond counsel that any specified action required under any provision of the Tax Certificate is no longer required or that some further or different action is required to maintain the Tax-Exempt status of interest on the Bonds.

6. Identify any bond documents to be amended (please provide draft documents to implement the Request as soon as possible)

\_\_\_\_\_ Indenture

\_\_\_\_\_ Loan Agreement

\_\_\_\_\_ Remarketing

\_\_\_\_\_ Agreement

Other: The Tax Certificate (including Exhibit B).

7. Will this result in a reissuance for federal tax law purposes? If so, please provide a draft TEFRA notice, and, if required, a draft amendment to the Tax Agreement or No-Arbitrage Certificate (or similar tax document).

**No. The proposed amendments to the Tax Certificate will not result in a reissuance for federal tax law purposes.**

8. Is Bond Counsel willing to provide an opinion to the effect that the Request is in accordance with the related transaction documents? If no, please explain.

**Yes. Orrick, Herrington & Sutcliffe LLP (“Orrick”), legal counsel to the Borrower, and a nationally-recognized bond counsel firm, is willing to provide an opinion that the proposed amendments to the Tax Certificate (including Exhibit B) are in accordance with Section 6.3 of the Tax Certificate and Section 5.6(d) of the Loan Agreement.**

9. If the bonds associated with the Request were issued as tax-exempt bonds, is Bond Counsel willing to provide an opinion to the effect that the Request will not adversely affect the tax-exempt status of the bonds? If no, please explain.

**Yes. Orrick, legal counsel to the Borrower, and a nationally-recognized bond counsel firm, is willing to provide an opinion that the proposed amendments to the Tax Certificate (including Exhibit B) will not, in and of itself, adversely affect the exclusion from gross income for federal income tax purposes of interest with respect to the Bonds.**

10. If the Request involves the substitution of a credit facility or a liquidity facility, will the applicant be able to provide written evidence, from the rating agencies specified in the transaction documents, to the effect that the Request will not result in a rating lower than the rating required by the transaction documents? If no, please explain.

**N/A**

11. Distribution list with contact information:

**Bond Counsel: Stradling Yocca Carlson & Rauth, P.C. delivered its approving opinion in connection with the June 19, 2008 issuance of the Bonds. The Borrower proposes that Orrick deliver any opinions required of nationally-recognized bond counsel in connection with the proposed amendments to the Tax Certificate (including Exhibit B). Contact information for Orrick:**

<b>Dean Criddle</b>	<a href="mailto:dcriddle@orrick.com">dcriddle@orrick.com</a>	<b>415-773-5783</b>
<b>Wolfram Pohl</b>	<a href="mailto:wpohl@orrick.com">wpohl@orrick.com</a>	<b>415-773-4252</b>
<b>Orrick, Herrington &amp; Sutcliffe LLP</b>		
<b>405 Howard Street</b>		
<b>San Francisco, CA 94105</b>		

**Borrower:**

<b>Greg Fisher</b>	<a href="mailto:gfisher@caiso.com">gfisher@caiso.com</a>	<b>916-608-7206</b>
<b>Assistant General Counsel – Corporate</b>		
<b>California ISO</b>		
<b>250 Outcropping Way</b>		
<b>Folsom, CA 95630</b>		

**Attachment 2 – Written Request for Amendment of the 2009A Bonds**



## REQUEST FOR AMENDMENT OR OTHER POST-BOND ISSUANCE ACTIONS

In order to consider post-issuance modifications, substitutions, redemptions or other actions related to I-Bank bond financings (a "Request"), I-Bank staff must have complete information regarding the nature of the request. Upon receipt of the information listed below, I-Bank Bond Unit staff will provide a single point of contact and prepare a list of issues, further questions or additional information needed so that the applicant can address them in an organized fashion.

The I-Bank Bond Unit staffer assigned to the Request will also contact the I-Bank Legal Unit for a determination as to whether the Request falls within the scope of authority delegated from the I-Bank Board to the Executive Director and his assignees (the "Delegation"). Please note that I-Bank staff reserves the right to elect to present any Request to the I-Bank Board for its approval regardless of the Delegation authority. Upon receipt of a Delegation determination from the I-Bank Legal Unit, the Bond Unit staffer will advise the applicant of the determination and the next steps in the process.

***The Request for Amendment or Other Post-Bond Issuance Actions may be submitted via email.***

1. Date of Request: **October 1, 2012**
2. Name/Title, Date, of Bond Issue

**California Infrastructure and Economic Development Bank Revenue Bonds (California Independent System Operator Corporation Project) 2009 Series A, issued July 22, 2009 in the aggregate principal amount of \$200,000,000 (the "Bonds").**

3. Description of why amendment(s), substitution(s) or other action(s) is/are needed/requested: (e.g., Issues relating to addition of credit support; substituting LOC provider, lender requirement to update financial covenants)

**In connection with the issuance of the Bonds, the I-Bank and the California Independent System Operator Corporation (the "Borrower") executed and delivered a Tax Certificate, dated July 22, 2009 (the "Tax Certificate"), including Exhibit B, Borrower's Tax Certificate, also dated July 22, 2009 ("Exhibit B").**

**Certain sections of the Tax Certificate (including Exhibit B) provide that specified future actions may be taken upon the receipt of an opinion of "Bond Counsel". "Bond Counsel" is defined to mean Stradling Yocca Carlson & Rauth, P.C., the nationally recognized bond counsel firm that delivered its approving opinion in connection with the July 22, 2009 issuance of the Bonds.**

**Certain other sections of the Tax Certificate (including Exhibit B) provide that specified future actions may be taken upon the receipt of an opinion of any nationally-recognized bond counsel or after consultation with any nationally-recognized bond counsel. Some of the actions which require an opinion of "Bond Counsel" overlap with actions which require an opinion of any nationally-recognized bond counsel.**

The Borrower proposes to amend the Tax Certificate (including Exhibit B) such that required post-issuance opinions could be obtained from any nationally-recognized bond counsel.

4. Proposed Timeline

As soon as possible. The Borrower is prepared to execute the proposed amendment as soon as the I-Bank is able.

5. Identify the section numbers and the names of the original transaction documents that govern or relate to the Request. Please provide copies (preferably in an electronic format) of such documents.

- Section 6.3 of the Tax Certificate permits amendments to the Tax Certificate (including Exhibit B) upon agreement of the I-Bank and the Borrower, supported by an approving opinion from nationally-recognized bond counsel. The Borrower proposes to rely upon Section 6.3 of the Tax Certificate to amend the following Sections of the Tax Certificate (including Exhibit B):
  - Tax Certificate: Section 1.4
  - Exhibit B: Sections 1.3, 3.3.8, 4.3
- Loan Agreement between the I-Bank and the Borrower, dated as of July 1, 2009 (the "Loan Agreement"). The Borrower believes that the proposed amendments to the Tax Certificate (including Exhibit B) also are supported by Section 5.6(e) of the Loan Agreement. Section 5.6(e) authorizes the Borrower to revise any action required by the Tax Certificate by delivering to the I-Bank and the Trustee an opinion of nationally-recognized bond counsel that any specified action required under any provision of the Tax Certificate is no longer required or that some further or different action is required to maintain the Tax-Exempt status of interest on the Bonds.

6. Identify any bond documents to be amended (please provide draft documents to implement the Request as soon as possible)

Indenture

Loan Agreement

Remarketing

Agreement

Other: The Tax Certificate (including Exhibit B).

7. Will this result in a reissuance for federal tax law purposes? If so, please provide a draft TEFRA notice, and, if required, a draft amendment to the Tax Agreement or No-Arbitrage Certificate (or similar tax document).

**No. The proposed amendments to the Tax Certificate will not result in a reissuance for federal tax law purposes.**

8. Is Bond Counsel willing to provide an opinion to the effect that the Request is in accordance with the related transaction documents? If no, please explain.

**Yes. Orrick, Herrington & Sutcliffe LLP (“Orrick”), legal counsel to the Borrower, and a nationally-recognized bond counsel firm, is willing to provide an opinion that the proposed amendments to the Tax Certificate (including Exhibit B) are in accordance with Section 6.3 of the Tax Certificate and Section 5.6(e) of the Loan Agreement.**

9. If the bonds associated with the Request were issued as tax-exempt bonds, is Bond Counsel willing to provide an opinion to the effect that the Request will not adversely affect the tax-exempt status of the bonds? If no, please explain.

**Yes. Orrick, legal counsel to the Borrower, and a nationally-recognized bond counsel firm, is willing to provide an opinion that the proposed amendments to the Tax Certificate (including Exhibit B) will not, in and of itself, adversely affect the exclusion from gross income for federal income tax purposes of interest with respect to the Bonds.**

10. If the Request involves the substitution of a credit facility or a liquidity facility, will the applicant be able to provide written evidence, from the rating agencies specified in the transaction documents, to the effect that the Request will not result in a rating lower than the rating required by the transaction documents? If no, please explain.

N/A

11. Distribution list with contact information:

Bond Counsel: **Stradling Yocca Carlson & Rauth, P.C. delivered its approving opinion in connection with the July 22, 2009 issuance of the Bonds. The Borrower proposes that Orrick deliver any opinions required of nationally-recognized bond counsel in connection with the proposed amendments to the Tax Certificate (including Exhibit B). Contact information for Orrick:**

<b>Dean Criddle</b>	<a href="mailto:dcriddle@orrick.com">dcriddle@orrick.com</a>	<b>415-773-5783</b>
<b>Wolfram Pohl</b>	<a href="mailto:wpohl@orrick.com">wpohl@orrick.com</a>	<b>415-773-4252</b>
<b>Orrick, Herrington &amp; Sutcliffe LLP</b>		
<b>405 Howard Street</b>		
<b>San Francisco, CA 94105</b>		

Borrower:

<b>Greg Fisher</b>	<a href="mailto:gfisher@caiso.com">gfisher@caiso.com</a>	<b>916-608-7206</b>
<b>Assistant General Counsel – Corporate</b>		
<b>California ISO</b>		
<b>250 Outcropping Way</b>		
<b>Folsom, CA 95630</b>		

**Attachment 3 – IRS Letter**



# California Infrastructure and Economic Development Bank

## *Request for Relief under Section 3 of Rev. Proc. 2002-48*

Edmund G. Brown Jr.  
Governor

October 15, 2012

Internal Revenue Service  
Ogden Submission Processing Center  
Ogden, Utah 84201

### **Board Members:**

**Brian P. Kelly**  
Chair

*Acting Secretary, Business,  
Transportation and Housing  
Agency*

**Bill Lockyer**  
State Treasurer

**Ana J. Matosantos**  
Director  
*Department of Finance*

**Anna M. Caballero**  
Secretary, State and  
*Consumer Services Agency*

**D. Everett Rice**  
Governor's Appointee

### **Executive Director:**

**Stanton C. Hazelroth**

*Mailing Address:*  
P.O. Box 2830  
Sacramento, CA 95812-  
2830

*Office Address:*  
980 9<sup>th</sup> Street, Suite 900  
Sacramento, CA 95814

(916) 322-1399  
(916) 322-6314 FAX  
www.ibank.ca.gov

California Infrastructure and Economic Development Bank, Revenue Bonds  
(California Independent System Operator Corporation Project), 2008 Series A

Ladies and Gentlemen:

On June 19, 2008, the California Infrastructure and Economic Development Bank (the "Issuer") issued its California Infrastructure and Economic Development Bank Revenue Bonds (California Independent System Operator Corporation Project) 2008 Series A (the "Obligations") in the aggregate principal amount of \$196,970,000 and, pursuant to a Loan Agreement dated as of June 1, 2008, immediately loaned the net proceeds of the Obligations to the California Independent System Operator Corporation (the "Borrower") to finance and refinance certain facilities of the Borrower (the "Project"). By its opinion letter dated June 19, 2008, subject to stated assumptions and conditions, Stradling Yocca Carlson & Rauth, a Professional Corporation ("Stradling"), bond counsel with respect to the Obligations, opined that interest on the Obligations would be excluded from gross income for federal income tax purposes. The Issuer filed Form 8038, dated June 19, 2008, with respect to the Obligations, identifying the Obligations as qualified 501(c)(3) bonds. A copy of that Form 8038, dated June 19, 2008 is enclosed as Appendix A.

On May 3, 2011, the Borrower sold certain assets (the "2011 Sold Assets") which had been financed or refinanced by the Obligations to T3 Systems Inc., exclusively for \$114,000 cash. T3 Systems Inc. is neither described in Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code") nor a governmental entity. A portion of the proceeds of the Obligations (not exceeding \$4,200,000) financed or refinanced the 2011 Sold Assets.

Recognizing that its sale of the 2011 Sold Assets gave rise to a nonqualified change in ownership of the 2011 Sold Assets, the Borrower asked Stradling to provide advice concerning remedial action. By a letter dated September 2, 2011 (the "2011 Stradling Letter"), Stradling advised the Borrower of the requirements to qualify for remedial action under Section 1.141-12(e) of the Treasury Regulations. A copy of the 2011 Stradling Letter is enclosed as Appendix B. Stradling did not advise the Borrower or the Issuer that Section 1.141-12(e)(2) required a new Form 8038 to be filed for Obligations allocable to the 2011 Sold Assets. Further, the Issuer first was made aware

of the Borrower's sale of the 2011 Sold Assets on October 1, 2012, and the Borrower had no independent knowledge of the existence of this post-issuance Form 8038 filing requirement because it had never before been through a remedial action process. As a result, the Borrower did not request the Issuer to file, and the Issuer did not file, a Form 8038 reporting the deemed reissuance by the deadline of August 15, 2011.

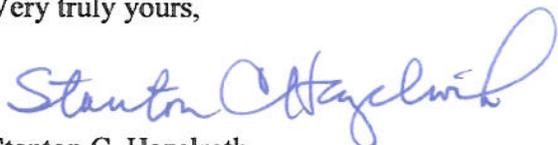
The Borrower first discovered the failure to file in September 2012 when the May 3, 2011 transaction was being reviewed by different nationally recognized bond counsel, Orrick, Herrington & Sutcliffe LLP ("Orrick"). At that point, the Borrower requested Orrick to report the failure to the Issuer and to assist the Issuer and the Borrower in preparing this filing.

So far as the Issuer and the Borrower are aware, the Obligations are not under examination by the Internal Revenue Service.

Enclosed as Appendix C is a Form 8038, dated October 15, 2012, reporting the deemed reissuance of the Obligations as of May 3, 2011. Based on the above facts, the Issuer respectfully requests the Internal Revenue Service to grant an extension of time for filing this enclosed Form 8038 and to treat this enclosed Form 8038 as timely filed with respect to the deemed reissued Obligations for purposes of Section 149(e) of the Code and Section 1.141-12(e)(2) of the Treasury Regulations.

The undersigned, Stanton C. Hazelroth, has knowledge of the relevant facts and circumstances concerning the Issuer. Enclosed as Appendix D is a Declaration of the Borrower, signed by Ryan Seghesio, Chief Financial Officer and Treasurer of the Borrower, declaring that he has knowledge of the relevant facts and circumstances concerning the Borrower, and that all facts set forth in this letter concerning the Borrower are true, accurate and correct.

Very truly yours,



Stanton C. Hazelroth  
Executive Director

Enclosures

- Appendix A – Form 8038, dated June 19, 2008
- Appendix B – 2011 Stradling Letter
- Appendix C – Form 8038, dated October 15, 2012
- Appendix D – Declaration of the Borrower

**Attachment 4 - Form 8038**

Form **8038**  
(Rev. April 2011)  
Department of the Treasury  
Internal Revenue Service

**Information Return for Tax-Exempt  
Private Activity Bond Issues**  
(Under Internal Revenue Code section 149(e))  
▶ See separate instructions.

OMB No. 1545-0720

Part I Reporting Authority		Check if Amended Return ▶ <input type="checkbox"/>
1 Issuer's name California Infrastructure and Economic Development Bank		2 Issuer's employer identification number 63-0304653
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a
4 Number and street (or P.O. box if mail is not delivered to street address) 980 9th Street	Room/suite 900	5 Report number (For IRS Use Only) <input type="checkbox"/> 1 <input type="checkbox"/> <input type="checkbox"/>
6 City, town, or post office, state, and ZIP code Sacramento, California 95814		7 Date of issue (MM/DD/YYYY) 5/3/2011
8 Name of issue California Infrastructure and Economic Development Bank Revenue Bonds (California Independent System Operator Corporation Project) 2008 Series A		9 CUSIP number 13033WM67
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information Stanton C. Hazelroth, Executive Director		10b Telephone number of officer or other employee shown on 10a 916-322-6314

Part II Type of Issue (Enter the issue price.)	Issue Price
11 Exempt facility bond:	
a Airport (sections 142(a)(1) and 142(c)) . . . . .	11a
b Docks and wharves (sections 142(a)(2) and 142(c)) . . . . .	11b
c Water furnishing facilities (sections 142(a)(4) and 142(e)) . . . . .	11c
d Sewage facilities (section 142(a)(5)) . . . . .	11d
e Solid waste disposal facilities (section 142(a)(6)) . . . . .	11e
f Qualified residential rental projects (sections 142(a)(7) and 142(d)) (see instructions)	11f
Meeting 20-50 test (section 142(d)(1)(A)) . . . . . <input type="checkbox"/>	
Meeting 40-60 test (section 142(d)(1)(B)) . . . . . <input type="checkbox"/>	
Meeting 25-60 test (NYC only) (section 142(d)(6)) . . . . . <input type="checkbox"/>	
Has an election been made for deep rent skewing (section 142(d)(4)(B))? . . . <input type="checkbox"/> Yes <input type="checkbox"/> No	
g Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f)) . . . . .	11g
h Facilities allowed under a transitional rule of the Tax Reform Act of 1986 (see instructions)	11h
Facility type _____	
1986 Act section _____	
i Qualified enterprise zone facility bonds (section 1394) (see instructions) . . . . .	11i
j Qualified empowerment zone facility bonds (section 1394(f)) (see instructions) . . . . .	11j
k District of Columbia Enterprise Zone facility bonds (section 1400A) . . . . .	11k
l Qualified public educational facility bonds (sections 142(a)(13) and 142(k)) . . . . .	11l
m Qualified green building and sustainable design projects (sections 142(a)(14) and 142(l)) . . . . .	11m
n Qualified highway or surface freight transfer facilities (sections 142(a)(15) and 142(m)) . . . . .	11n
o Other (see instructions) _____	
p Qualified New York Liberty Zone bonds (section 1400L(d)) _____	11p
q Other (see instructions) _____	11q
12a Qualified mortgage bond (section 143(a)) . . . . .	12a
b Other (see instructions) _____	12b
13 Qualified veterans' mortgage bond (section 143(b)) (see instructions) . . . . . ▶	13
Check the box if you elect to rebate arbitrage profits to the United States . . . . . <input type="checkbox"/>	
14 Qualified small issue bond (section 144(a)) (see instructions) . . . . . ▶	14
Check the box for \$10 million small issue exemption . . . . . <input type="checkbox"/>	
15 Qualified student loan bond (section 144(b)) . . . . .	15
16 Qualified redevelopment bond (section 144(c)) . . . . .	16
17 Qualified hospital bond (section 145(c)) (attach schedule—see instructions) . . . . .	17
18 Qualified 501(c)(3) nonhospital bond (section 145(b)) (attach schedule—see instructions) . . . . .	18
Check box if 95% or more of net proceeds will be used only for capital expenditures . . . . . ▶ <input checked="" type="checkbox"/>	\$1,900,000*
19 Nongovernmental output property bond (treated as private activity bond) (section 141(d)) . . . . .	19
20a Other (see instructions) _____	
b New York Liberty Zone advance refunding bond (section 1400L(e)) (see instructions) _____	20b
c Other. Describe (see instructions) ▶ _____	20c

\* Not more than \$1,900,000. See attached Schedule for Form 8038, Line 18.

**Part III Description of Bonds** (Complete for the entire issue for which this form is being filed.)

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	2/1/2014	\$ 1,900,000*	\$ 1,900,000*	1.725 years	3.273706** %

**Part IV Uses of Proceeds of Issue** (including underwriters' discount)

	Amount
22 Proceeds used for accrued interest	22 0
23 Issue price of entire issue (enter amount from line 21, column (b))	23 1,900,000*
24 Proceeds used for bond issuance costs (including underwriters' discount)	24 0
25 Proceeds used for credit enhancement	25 0
26 Proceeds allocated to reasonably required reserve or replacement fund	26 0
27 Proceeds used to currently refund prior issue (complete Part VI)	27 1,900,000*
28 Proceeds used to advance refund prior issue (complete Part VI)	28 0
29 Add lines 24 through 28	29 1,900,000*
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30

**Part V Description of Property Financed by Nonrefunding Proceeds**

Caution: The total of lines 31a through e below must equal line 30 above. Do not complete for qualified student loan bonds, qualified mortgage bonds, or qualified veterans' mortgage bonds.

Type of Property Financed by Nonrefunding Proceeds:	Amount
a Land	31a
b Buildings and structures	31b
c Equipment with recovery period of more than 5 years	31c
d Equipment with recovery period of 5 years or less	31d
e Other. Describe (see instructions)	31e

32 North American Industry Classification System (NAICS) of the projects financed by nonrefunding proceeds.

NAICS Code	Amount of nonrefunding proceeds	NAICS Code	Amount of nonrefunding proceeds
a	\$	c	\$
b	\$	d	\$

**Part VI Description of Refunded Bonds** (Complete this part only for refunding bonds.)

33 Enter the remaining weighted average maturity of the bonds to be currently refunded	▶ 1.725 years
34 Enter the remaining weighted average maturity of the bonds to be advance refunded	▶ N/A years
35 Enter the last date on which the refunded bonds will be called	▶ 5 / 3 / 2011
36 Enter the date(s) the refunded bonds were issued	▶ June 19, 2008

**Part VII Miscellaneous**

37 Name of governmental unit(s) approving issue (see the instructions) ▶ No approval needed Section 147(f)(2)(D)

38 Check the box if you have designated any issue under section 265(b)(3)(B)(i)(III) . . . . . ▶

39 Check the box if you have elected to pay a penalty in lieu of arbitrage rebate . . . . . ▶

40a Check the box if you have identified a hedge and enter the following information . . . . . ▶

b Name of hedge provider \_\_\_\_\_

c Type of hedge ▶ \_\_\_\_\_

d Term of hedge ▶ \_\_\_\_\_

41 Check the box if the hedge is superintegrated . . . . . ▶

42a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) ▶ \_\_\_\_\_

b Enter the final maturity date of the GIC . . . . . ▶ / /

c Enter the name of the GIC provider ▶ \_\_\_\_\_

43 Check the box if the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated in accordance with the requirements under the Code and Regulations (see instructions) . . . . . ▶

44 Check the box if the issuer has established written procedures to monitor the requirements of section 148 . . . . . ▶

45a Enter the amount of reimbursement if some portion of the proceeds was used to reimburse expenditures . . . . . ▶ \_\_\_\_\_

b Enter the date the official intent was adopted . . . . . ▶ / /

46 Check the box if the issue is comprised of qualified redevelopment, qualified small issue, or exempt facilities bonds and provide name and EIN of the primary private user . . . . . ▶

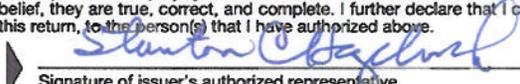
Name ▶ \_\_\_\_\_ EIN \_\_\_\_\_

\* See attached Schedule for Form 8038, Line 18.

\*\* The instructions to Form 8038 state that yield should be determined under Section 148(h) of the Internal Revenue Code. Applying these principles, the yield on the 2008 Series A Bonds issued on June 19, 2008 is 3.273706%. Per Treas. Reg. § 141-12(e)(2), there is no deemed reissuance for purposes of Section 148 of the Internal Revenue Code, and there consequently is no change in the 3.273706% yield on the 2008 Series A Bonds.

Part VIII Volume Caps		Amount
47	Amount of state volume cap allocated to the issuer. <b>Attach copy of state certification</b> . . . . .	47
48	Amount of issue subject to the unified state volume cap . . . . .	48
49	Amount of issue not subject to the unified state volume cap or other volume limitations:	49
a	Of bonds for governmentally owned solid waste facilities, airports, docks, wharves, environmental enhancements of hydroelectric generating facilities, or high-speed intercity rail facilities . . . . .	49a
b	Under a carryforward election. Attach a copy of Form 8328 to this return . . . . .	49b
c	Under transitional rules of the Tax Reform Act of 1986. Enter Act section ▶ _____	49c
d	Under the exception for current refunding (section 146(f) and section 1313(a) of the Tax Reform Act of 1986)	49d
50a	Amount of issue of qualified veterans' mortgage bonds . . . . .	50a
b	Enter the state limit on qualified veterans' mortgage bonds . . . . .	50b
51a	Amount of section 1394(f) volume cap allocated to issuer. <b>Attach copy of local government certification</b>	51a
b	Name of empowerment zone ▶ _____	
52	Amount of section 142(k)(5) volume cap allocated to issuer. <b>Attach copy of state certification</b>	52

**Signature and Consent** Under penalties of perjury, I declare that I have examined this return, and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person(s) that I have authorized above.


10/15/12

Signature of issuer's authorized representative \_\_\_\_\_ Date \_\_\_\_\_
 Stanton C. Hazelroth, Executive Director

<b>Paid Preparer Use Only</b>	Print/Type preparer's name Wolfram Pohl	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	Preparer's PTIN P01078285
	Firm's name ▶ Orrick, Herrington & Sutcliffe LLP			Firm's EIN ▶ 94-2952627	
	Firm's address ▶ 405 Howard Street San Francisco, CA 94105			Phone no. 415-773-5700	

**Attachment 5 – Schedule for 8038**

**SCHEDULE FOR FORM 8038**  
**LINE 18**  
**CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK**  
**REVENUE BONDS (CALIFORNIA INDEPENDENT SYSTEM OPERATOR**  
**CORPORATION PROJECT) 2008 SERIES A**

**October 15, 2012**

<u>Borrower</u>	<u>EIN</u>	<u>Total Amount of</u> <u>Bonds</u>
California Independent System Operator Corporation	94-3274043	Not more than \$1,900,000

Please note: Certain assets which were financed or refinanced by approximately 2.2% of the net proceeds of the 2008 Series A Bonds were sold exclusively for \$114,000 cash on May 3, 2011 in a nonqualified change in use. \$84,620,000 principal amount of the 2008 Series A Bonds remained outstanding on May 3, 2011. Consequently, not more than \$1,900,000 of this \$84,620,000 principal amount of the 2008 Series A Bonds are "nonqualified bonds" for purposes of Sections 1.141-12(j) and 1.141-12(e)(2) of the Treasury Regulations.

The Borrower has used all \$114,000 of cash disposition proceeds, together with all earnings from the investment and reinvestment thereof, to purchase other qualified replacement property to be owned and used in a manner that does not cause the 2008 Series A Bonds to meet either the private ownership test of Section 145(a)(1) of the Internal Revenue Code of 1986 (the "Code"), the private business use tests of Section 141(b) of the Code, as modified by Section 145(a)(2) of the Code, or the private loan bond test of Section 141(c) of the Code. The 2008 Series A Bonds also meet the requirements of Section 1.141-12(a) of the Treasury Regulations. Consequently, the 2008 Series A Bonds qualify for remedial action under Section 1.141-12(e) of the Treasury Regulations.

**Attachment 6 – Form of Amendment of Tax Certificate**

## Amendment to Tax Certificate

This Amendment to Tax Certificate (this “Amendment”) amends the Tax Certificate, dated June 19, 2008 (the “Tax Certificate”), executed and delivered by the California Infrastructure and Economic Development Bank (the “Issuer”) and the California Independent System Operator Corporation (the “Corporation”), including Exhibit B, Borrower’s Tax Certificate, also dated June 19, 2008 (“Exhibit B”), executed and delivered by the Corporation in connection with the Issuer’s issuance of \$196,970,000 aggregate principal amount of California Infrastructure and Economic Development Bank Revenue Bonds (California Independent System Operator Corporation Project) 2008 Series A (the “Obligations”).

WHEREAS, the Obligations were issued pursuant to an Indenture of Trust between the Issuer and Deutsche Bank National Trust Company (the “Trustee”), dated as of June 1, 2008 (the “Indenture”), and proceeds of the Obligations were loaned to the Corporation pursuant to a Loan Agreement between the Issuer and the Corporation, dated as of June 1, 2008 (the “Loan Agreement”); and

WHEREAS, in connection with the original issuance of the Obligations, as bond counsel to the Issuer, Stradling Yocca Carlson & Rauth (“Stradling” and referred to in the Tax Certificate as “Bond Counsel”) delivered its opinion dated June 19, 2008, *inter alia*, that interest on the Obligations is excluded from gross income for federal income tax purposes (the “Stradling Opinion”); and

WHEREAS, the Stradling Opinion acknowledges that “[c]ertain requirements and procedures contained or referred to in the . . . Tax Certificate may be changed, and certain actions may be taken, under the circumstances and subject to the terms and conditions set forth therein, upon the advice or with the approving opinion of other counsel nationally recognized in the area of tax-exempt obligations”]; and

WHEREAS, sections 2.2.4, 2.3, 4.4.2, 4.5 and 6.3 of the Tax Certificate, and section 3.2.1 of Exhibit B, provide that specified future actions may be taken upon the receipt of an opinion of any nationally-recognized bond counsel that the action will not adversely affect the exclusion of interest on the Obligations from gross income for federal income tax purposes; and

WHEREAS, section 4.2 of Exhibit B states in part: “The [Corporation] covenants to consult with nationally-recognized bond counsel with respect to the applicable method of allocation of Gross Proceeds to expenditures that are not Qualified Capital Expenditures.”; and

WHEREAS, section 1.4 of the Tax Certificate, and sections 1.3, 3.3.8 and 4.3 of Exhibit B, provide that specified future actions may be taken upon the receipt of an opinion of “Bond Counsel” (*i.e.*, Stradling) that the action will not adversely affect the exclusion of interest on the Obligations from gross income for federal income tax purposes; and

WHEREAS, section 3.18 of the Tax Certificate states in part: “The [Corporation] covenants to retain and consult with Bond Counsel, acceptable to the Issuer, prior to making any ‘yield reduction payments’ pursuant to §1.148-5(c) of the Treasury Regulations.”; and

WHEREAS, some of the actions identified in sections 2.2.4, 2.3, 4.4.2, 4.5 and 6.3 of the Tax Certificate, or in sections 3.2.1 and 4.2 of Exhibit B, overlap with actions identified in sections 1.4 and 3.18 of the Tax Certificate, or in sections 1.3, 3.3.8 and 4.3 of Exhibit B; and

WHEREAS, section 6.3 of the Tax Certificate states: “Notwithstanding any provision of this Tax Certificate, the Issuer and the [Corporation] may amend this Tax Certificate and thereby alter any actions allowed or required by this Tax Certificate if such amendment is based on an opinion of nationally-recognized bond counsel that the exclusion from gross income of interest with respect to the Obligations and any refinanced obligations will not be adversely affected.”; and

WHEREAS, section 5.6(d) of the Loan Agreement states: “Notwithstanding any provision of this Section 5.6 . . . or any provision of the Tax Certificate, if the Corporation shall provide to the Infrastructure Bank and the Trustee an Opinion of Bond Counsel that any specified action required under . . . any provision of the Tax Certificate is no longer required or that some further or different action is required to maintain the Tax-Exempt status of interest on the Bonds, the Corporation, the Trustee and the Infrastructure Bank may conclusively rely on such opinion in complying with the requirements of . . . the provisions of the Tax Certificate; and the covenants contained in . . . the Tax Certificate shall be deemed to be modified to that extent.”; and

WHEREAS, for purposes of section 5.6(d) of the Loan Agreement, section 1.01 of the Indenture defines “Opinion of Bond Counsel” to mean a written opinion of counsel (who may be counsel for the Corporation) acceptable to the Infrastructure Bank and the Corporation; and

WHEREAS, on October 9, 2012, the Board of Directors of the Issuer adopted Resolution No. 12-08, section 2 of which delegates to the Executive Director of the Issuer authority to execute and deliver any proposed amendment of certificates or other documents previously executed and delivered by the Issuer in connection with bonds issued by the Issuer, “provided that, the [Issuer] receives an opinion of counsel to the effect (1) that the Amendment is in accordance with the associated transaction documents and (2) where bonds were issued as tax-exempt bonds, that the Amendment will not adversely affect the tax-exempt status of interest on the bonds.”; and

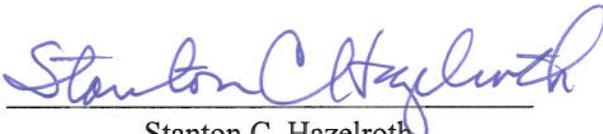
WHEREAS, the Corporation has delivered to the Issuer and to the Trustee an opinion of Orrick, Herrington & Sutcliffe, LLP, to the effect (1) that this Amendment is in accordance with section 6.3 of the Tax Certificate and section 5.6(d) of the Loan Agreement and (2) that this Amendment will not, in and of itself, adversely affect the exclusion from gross income for federal income tax purposes of interest on the Obligations.

NOW, THEREFORE, the Issuer and the Corporation do hereby declare and agree as follows:

1. The foregoing recitals are true, accurate and correct.
2. Sections 1.4 and 3.18 of the Tax Certificate, and sections 1.3, 3.3.8 and 4.3 of Exhibit B, are hereby amended to delete the words "Bond Counsel" each place they appear therein and to substitute the words "nationally-recognized bond counsel."

Dated: October 15, 2012

CALIFORNIA INFRASTRUCTURE AND  
ECONOMIC DEVELOPMENT BANK

By:   
Stanton C. Hazelroth  
Executive Director

CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR CORPORATION

By: \_\_\_\_\_  
Ryan Seghesio  
Chief Financial Officer and Treasurer

NOW, THEREFORE, the Issuer and the Corporation do hereby declare and agree as follows:

1. The foregoing recitals are true, accurate and correct.
2. Section 1.4 of the Tax Certificate, and sections 1.3, 3.3.8 and 4.3 of Exhibit B, are hereby amended to delete the words "Bond Counsel" each place they appear therein and to substitute the words "nationally-recognized bond counsel."

This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Dated: October 22, 2012

CALIFORNIA INFRASTRUCTURE AND  
ECONOMIC DEVELOPMENT BANK

By: \_\_\_\_\_

Stanton C. Hazelroth  
Executive Director

CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR CORPORATION

By:  \_\_\_\_\_

Ryan Seghesio  
Chief Financial Officer and Treasurer