

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 37-20709
Date Received: 4/10/2002
Receipt No:
Received By:

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

IDAHO POWER CO Phone: (208)388-2300

PO BOX 70
BOISE ID USA 83701-0070

2. Date of Priority: 06/14/1948

3. Source: MALAD RIVER Cove CREEK Trib. to: SNAKE RIVER
MALAD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 Lot	County	Type
06S	13E	36	NW	NW		GOODING	
06S	13E	25	SW	SW		GOODING	

5. Description of diverting works:

DIVERSION DAM, CONCRETE FLUME TO POWER HOUSE AT UPPER MALAD POWER PLANT

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
POWER	01/01	12/31	100	

7. Total Quantity Appropriated is:
100 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of	1/4 Lot	Use	Acres
06S	13E	35	NE	NW	POWER	

11. Place of use in counties: GOODING

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

CLAIM FILED TO REFLECT HISTORICAL BENEFICIAL USE AT UPPER MALAD POWER PLANT.

SEE MAP IN FILE. SEE AFFIDAVIT OF JON BOWLING IN FILE.

OTHER WATER RIGHTS AT THE SAME PLACE AND FOR THE SAME PURPOSE OF USE DESCRIBED ABOVE: 37-2471.

15. Basis of Claim: Beneficial Use

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39356

Ident. Number

37-20709

Date Received

4-10-2002

Receipt Number

SO 24754

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

*James C. Tucker's
extension at
IP.*

Please type or print clearly

1. Name of Claimant (s) Idaho Power Company Phone (208) 388-2112Mailing Address P. O. Box 70, Boise, Idaho Zip 837012. Date of Priority (Only one (1) per claim) June 14, 19483. Source of water supply (a) Malad River & Cove Creek
which is tributary to (b) Snake River & Malad River4. a. Location of existing point of diversion is: Township 06S Range 13E Section 25,1/4 of SW 1/4 of SW 1/4, Govt. Lot, B.M., County of GoodingAdditional points of diversion if any: 06S, 13E, Sec. 36, NWNW

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of

1/4, Govt. Lot B.M., County of5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.Diversion dam, concrete flume to power house.

COPY

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Power purposes from 1/1 to 12/31 amount 100 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 100 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is -0- acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Power

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
06S	13E	35					P												

Total number of acres irrigated -0-

11. In which county (ies) are lands listed above as place of use located? Gooding

12. Do you own the property listed above as place of use? Yes X No _____

If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

37-02471 or None ()

14. Remarks:

Claim filed to reflect historical beneficial use. Upper Malad power plant.

COPY

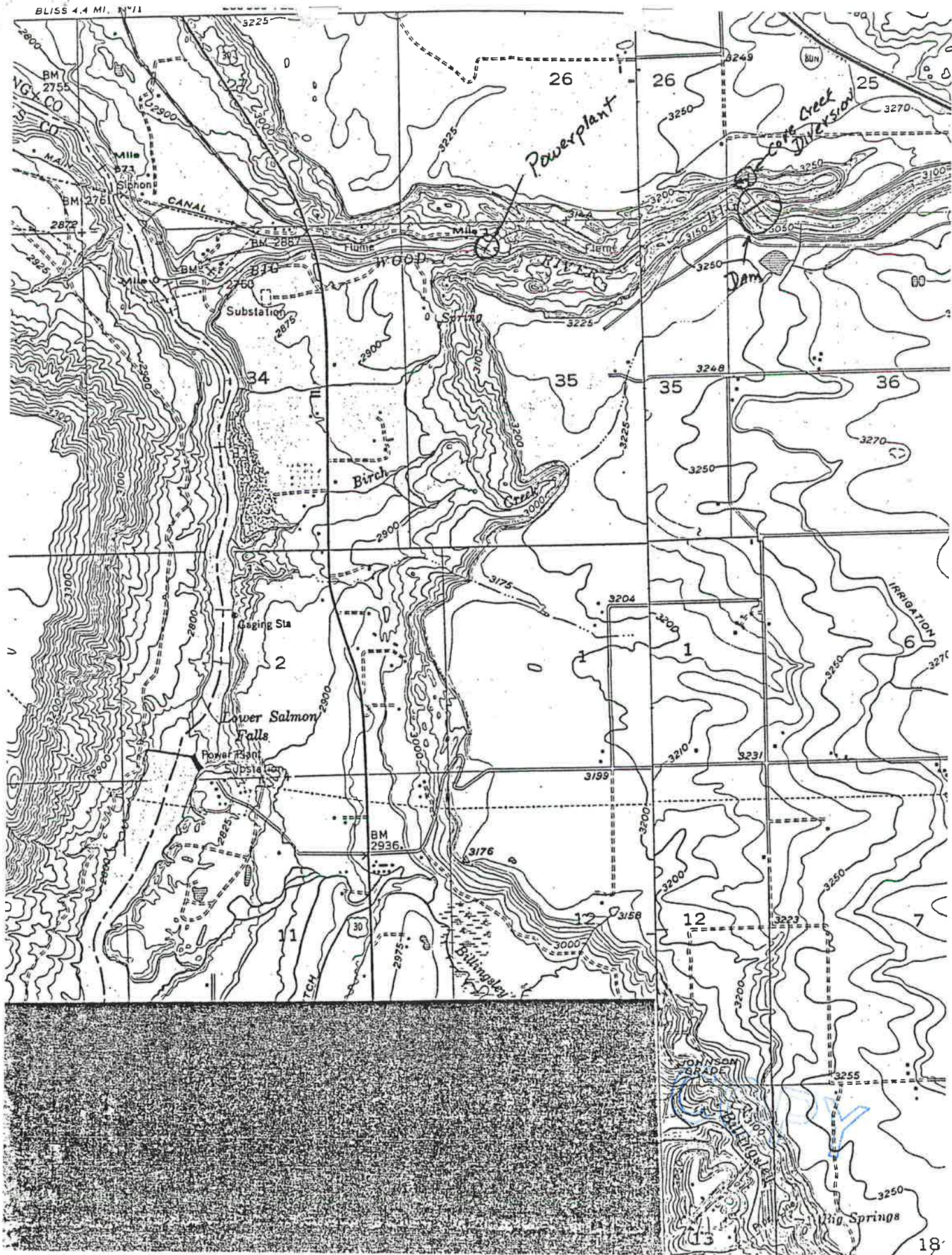
Last Name IDAHO POWER COMPANY Ident No. _____

Copies: White - State, Yellow - Claimant

Scale: 2 inches equals 1 mile

(SEE ATTACHED)

A 15x15 grid of squares, each containing a crosshair pattern. The grid is used for drawing a 15x15 square. A blue 'COPY' watermark is visible in the bottom right corner.



15. Basis of Claim (check one) Beneficial Use X Posted Notice _____ License _____ Permit _____
Decree _____
If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

16. Signature (s)
(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled
"How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____
wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments _____

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true
and correct.

Signature of Claimant (s) _____ Date _____
_____ Date _____

For Organizations: I do solemnly swear or affirm that I am Senior Attorney
Title
of Idaho Power Company, that I have signed the foregoing
Organization
document in the space below as Senior Attorney of Idaho Power Company
Title Organization
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent [Signature]
Title and Organization Senior Attorney, Idaho Power Company Date 11/02/01

State of Idaho/or _____)
County of Ada) SS.

Subscribed and sworn to (or affirmed) before me this 2nd day of November 2001



Notary Public Mary Gray
Residing at Boise, ID
My Commission Expires 7/17/2004

Please Print Name

17. Notice of Appearance
Notice is hereby given that I, James C. Tucker will be acting as attorney at law on behalf
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above
should be mailed to me at the address listed below.

Signature [Signature]
Address Idaho Power Company, P. O. Box 70, Boise, ID 83701
Date 11/02/01

COPY



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 15, 2005

X
X
X
X

Re: Evidence of Priority

RESPONSE DEADLINE
JUNE 17, 2005

Dear Claimant:

The Notice of Claim identified with the number shown above your name on the mailing label has been filed in the Snake River Basin Adjudication (SRBA). The Notice indicates your water usage is based on "Beneficial Use" or a "Statutory Claim." Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed. The date of first use, known as the priority date, has not been confirmed by a License, Decree or Permit. The Department will, in the coming year, conduct reviews and/or field exams for the claims in your area. Since the priority date of a beneficial use water right cannot be confirmed by field examination, **proof must be provided by the claimant** supporting the priority date claimed.

If you no longer own the property to which the claim is appurtenant please forward this correspondence to the present owner, or return it to the Department. If you have received this correspondence from the previous owner of the property it is required that you file a Change of Ownership form with the Department in order to receive future mailings and to continue to be a party in the adjudication.

Enclosed you will find a computer printout of your Notice of Claim and the pamphlet entitled "Evidence of Priority." The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement.

PLEASE NOTE: The Department will not recommend the court decree the notice **as claimed** if no evidence of a priority date is submitted – it may be disallowed. It will be to your advantage to provide clear and convincing evidence. If you choose to submit statements from individuals as evidence, the statement does **not** need to be in the form of a notarized affidavit as described in the brochure, but must relate first hand knowledge of the water right in question and include dates, quantities of water and extent of water use.

Submit the required evidence supporting the priority date by the date shown above, referencing all documents with the corresponding Notice of Claim number (i.e. 37-_____). If you have questions not covered by this letter or the enclosed pamphlet, please contact this office.

Sincerely,

Douglas Jones, P.E.
Water Rights Supervisor

5/24/50

Enclosures

STATE OF IDAHO

STATE OF IDAHO)
)ss.
County of Ada)

AFFIDAVIT OF JON BOWLING

Upper Malad Hydroelectric Project - FERC Project # 2726

JON BOWLING, being first duly sworn upon oath, deposes and states as follows:

- 1. I am an engineer with Idaho Power Company (IPC), assigned to the Water Management Department, and have been employed by IPC for 8 ½ years. In connection with the relicensing of various of IPC's hydroelectric projects in Idaho and the preparation and verification of water right claims filed in the Snake River Basin Adjudication for water use at those projects, IPC has undertaken a review of the status of the water rights held for power generation together with the use of water for such purposes at its hydroelectric projects.**
- 2. In that regard, I am familiar with, and have conducted a review of, the records of IPC relating to the water rights held by IPC for its hydroelectric project on the Malad River [FERC Project # 2726, consisting of the Upper Malad and Lower Malad plants], as well as the current and historical use of water at those plants for the purpose of generating electrical energy. These records are kept in the regular course of business by IPC.**
- 3. This review has revealed that while the Upper Malad plant has a state licensed water right, Lic. # 37-02471, in the amount of 900 cfs for power purposes at the Upper Malad plant, the turbine hydraulic capacity at the project is 1000 cfs, 100 cfs over and above the licensed amount of 900 cfs.**
- 4. Advances in streamflow measurement technology and instrumentation in recent years has allowed IPC to make more accurate streamflow measurements in the power flume at Upper Malad revealing the true hydraulic capacity of the plant.**

5. My review of IPC records further reveals that IPC has diverted this additional 100 cfs, for a total diversion of 1000 cfs, and that all of the water has been beneficially used, for power purposes at the Upper Malad plant since the plant came on line on June 14, 1948.
6. I have reviewed the attached SRBA beneficial use claim for an additional 100 cfs of water with a priority date of June 14, 1948, at the Upper Malad plant and believe that said claim accurately reflects the additional water usage over and above the currently licensed water rights at that site.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED: April 4, 2002

Jon Bowling
Jon Bowling

SUBSCRIBED AND SWORN to before me this 4th day of April,
2002.



Charlotte Yorton
NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My commission expires: 12/14/07

Hancock, Vikie

From: Tuthill, Dave
Sent: Thursday, April 11, 2002 4:03 PM
To: Hancock, Vikie
Cc: Shaff, Don; Susan Hamlin (E-mail); Jones, Doug
Subject: RE: NEW BASIN 37 CLAIMS - ID POWER

Vikie:

I reviewed the affidavits that you sent me from Jon Bowling of Power. These affidavits, dated April 4, 2002, address precisely the issues that I raised below. It appears that for both plants the need for additional water right rate of flow is based on better flow measurement techniques rather than the installation of different turbines or the modification of penstocks.

Based on Jon's affidavits I concur with Doug's recommendation to charge \$50 per claim.

Please place a reminder on the claims to be sure to add subordination language when we make our recommendations.

Thanks for the quick follow-up, and your thorough (as always) work, Vikie!

Dave

-----Original Message-----

From: Hancock, Vikie
Sent: Thursday, April 11, 2002 11:32 AM
To: Tuthill, Dave
Subject: RE: NEW BASIN 37 CLAIMS - ID POWER

Dave,

I'm FAXing you copies of the Affidavits from IP engineer Jon Bowling.

Vikie

-----Original Message-----

From: Tuthill, Dave
Sent: Thursday, April 11, 2002 10:32 AM
To: Hancock, Vikie; Shaff, Don; Hamlin Nygard, Susan
Cc: Jones, Doug
Subject: RE: NEW BASIN 37 CLAIMS - ID POWER

Vikie,

Thanks for forwarding the question.

I recommend that we request that Idaho Power send us a letter or a report describing the relationship between rate of flow and kilowatts generated for each of the power plants -- as configured now and as changed from the date of first installation (historic modifications to the plants). In our request to IPCO we can state that the reasons for the request are to evaluate the fees and to evaluate the validity of the new claims.

Based on this information we will better be able to identify appropriate fees.

Don, Doug or Susan might have another take -- this is my first impression.

Take Care,

Dave

-----Original Message-----

From: Hancock, Vikie
Sent: Thursday, April 11, 2002 10:21 AM

To: Shaff, Don; Tuthill, Dave
Subject: NEW BASIN 37 CLAIMS - ID POWER

Don and Dave,

I just received two new claims from Idaho Power: 37-20709 & 37-20710. I have some questions as to the fees that should be charged for these claims, which are based upon Beneficial Use above and beyond previously filed claims based upon licensed rights.

Licensed right 37-2471 = new claim 37-20709 at Upper Malad Power Plant
Licensed rights 37-2128 & 37-2472 = new claim 37-20710 at Lower Malad Power Plant

Idaho Power asserts that these claims reflect additional cfs historically used at the two power plants on the Malad River to generate the capacity approved by each license, but do not assert any additional generating capacity. An affidavit submitted with each claim states that since the plants went on line more water than licensed has been used to generate the same amount of power at these two plants. The priority dates of both new claims are in 1948.

I checked the 1988 receipt #C002945 for the prior claims and it appears that the fees covered the generating capacity then claimed at the two plants. Since our filing fees are based on the generating capacity, not diversion rate, Doug suggested I charge a filing fee of \$50 per claim. I also waived the late fees as Second Round Notice has not gone out on basin 37. The \$50 filing fee seemed consistent with the fees charged for 37-2128 (\$47,300) and 37-2472 (\$50) which were both claimed for generation at Lower Malad.

Doug and I told the secretary who submitted the claims that we would ask for an opinion from our State Office and that there may be additional fees due. Please let me know if you agree with the fees I charged for filing, and also about the waiver of late fees. If you want to read the affidavit let me know and I'll FAX it up to you.

Thanks -

Vikie