State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

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Sanpitch

December 23, 1997

MR LEON DAY
45 W 10000 S STE 104
SANDY UT 84070

Dear Mr. Day:

I'm sorry it has taken me a couple of months to send this letter to you. There were several items from your letter that I needed to have researched which along with the press of other obligations has hindered me from responding before now.

Your letter refers to the historic practice in distributing water to the Brady ditch, the size of the flows which have historically been delivered at the Brady Ditch diversion, and the amount of water that was decreed to the Brady Ditch under the Johnson and Cox Decrees. The following information concerning these items comes from research done by our office of the proposed determination, the decrees, and the commissioner reports since 1950.

Enclosed is a graph showing the highest flow of water diverted into the Brady Ditch in each year since 1950. As you can see from the graph, there were a few times when 6 or 7 cfs were diverted into the ditch, but during the majority of the years the highest flow delivered was under 4 cfs. Also enclosed is a graph showing the average water flow delivered to the Brady Ditch since 1988. The graph indicates the average flow has been in the range of 3.5 cfs or less.

Four other graphs are enclosed for the Graveyard Ditch and the Sanpitch City or Fairview Ditch. These graphs show the highest amount of flow delivered each year from 1950 to present and also the average flow delivered each year since 1988. The diversions for these two ditches are located downstream of the Brady Ditch diversion. The flow delivered to these diversions must come from water which was bypassed at the Brady Ditch diversion, therefore, it appears that the dam at the Brady diversion could not have been a "dry" dam.

Your letter refers to the flow amounts of 11.20 cfs maximum and 4.89 cfs minimum which were described in the State Engineer's proposed determination of water rights for the Sevier River. This document is only a proposal to the court, it does not legally define the water rights unless it is decreed by the court. In the case of the Sevier River Cox Decree, the court decided not to base the decree on the proposed determination. Therefore, the proposed determination is now used only as a reference in interpreting the decree. If there is a discrepancy between the proposed determination and the decree, the decree is used as the legal definition of the water right. The flow amounts 11.20 cfs maximum and 4.35 cfs minimum are not mentioned in the Cox Decree related to the Brady Ditch water right, so they cannot be considered in any quantification of the right or distribution of the water.

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The Cox Decree states that pages 104 through 111 of the decree are a confirmation of the earlier Johnson Decree. Enclosed is a comparison of the two decrees with the fractional flows converted to decimal flows except where the number is ambiguous. In all but a handful of cases, the flows included in the two decrees agree exactly.

In reviewing water right no. 65-3235, which is the Brady Ditch award shown on page 107 of the Cox Decree for Paragraph no. 12 (should have been no. 13) of the Johnson Decree, it appears reasonable that a typographical error was made. It appears that the number should read 1-46 ½ /80 instead of 1.46 ½ /80; which would equate to a flow of 1.5813 cfs instead of .0183 cfs.

It appears that this interpretation also corresponds to what has historically been delivered at the Brady Ditch diversion. If water right no. 65-3235 is 1.5813 cfs, the Brady Ditch would have a total of 2.275 cfs of First Class water right. This flow rate is reasonably within the range of the Brady Ditch diversions shown on the enclosed graphs.

I understand that the Sheep Ditch water right (Cox Decree, page 75) is also diverted at the Brady Ditch diversion. The decree indicates a flow of 4.5 cfs with a priority date of 1897 for the Sheep Ditch right. This priority date is much later than the priority dates shown for the Johnson Decree First Class water (1872), so the Brady Ditch right would be met first and then the Sheep Ditch right.

Therefore, we recognize that for distribution purposes the right should be interpreted to be 1.5813 cfs. However, as I indicated above it appears that this amount of water has historically been delivered at the ditch diversion, so I don't believe there will be any major changes in the way water is distributed.

I must underline that this clarification is for distribution purposes only. The State Engineer does not have the authority to amend the Cox Decree or make a final adjudication of the water rights. Any final clarification and adjudication of the flow rate for water right no. 65-3235 would have to be made by the court. But for distribution purposes and under the given circumstances, the State Engineer recognizes the flow to be 1.5813 cfs

I hope this provides the information that you need. If you have further questions, please contact me at (801)538-07380.

Sincerely,

Lee H. Sim, P.E.
Assistant State Engineer
for Distribution and Adjudication

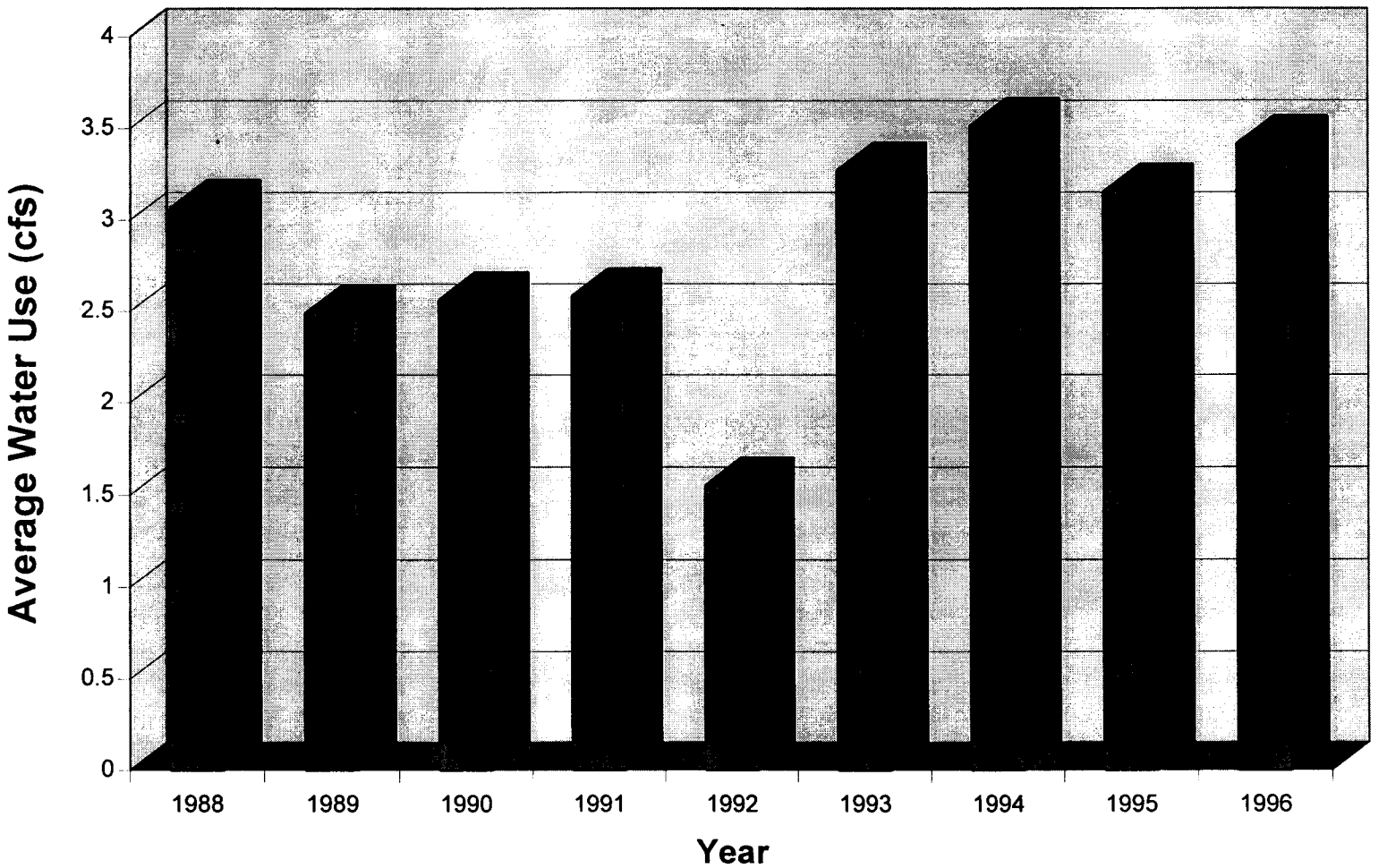
cc: Kirk Forbush
Larry Rawlings
Dan Brinkerhoff

COMPARISON OF JOHNSON DECREE AND COX DECREE

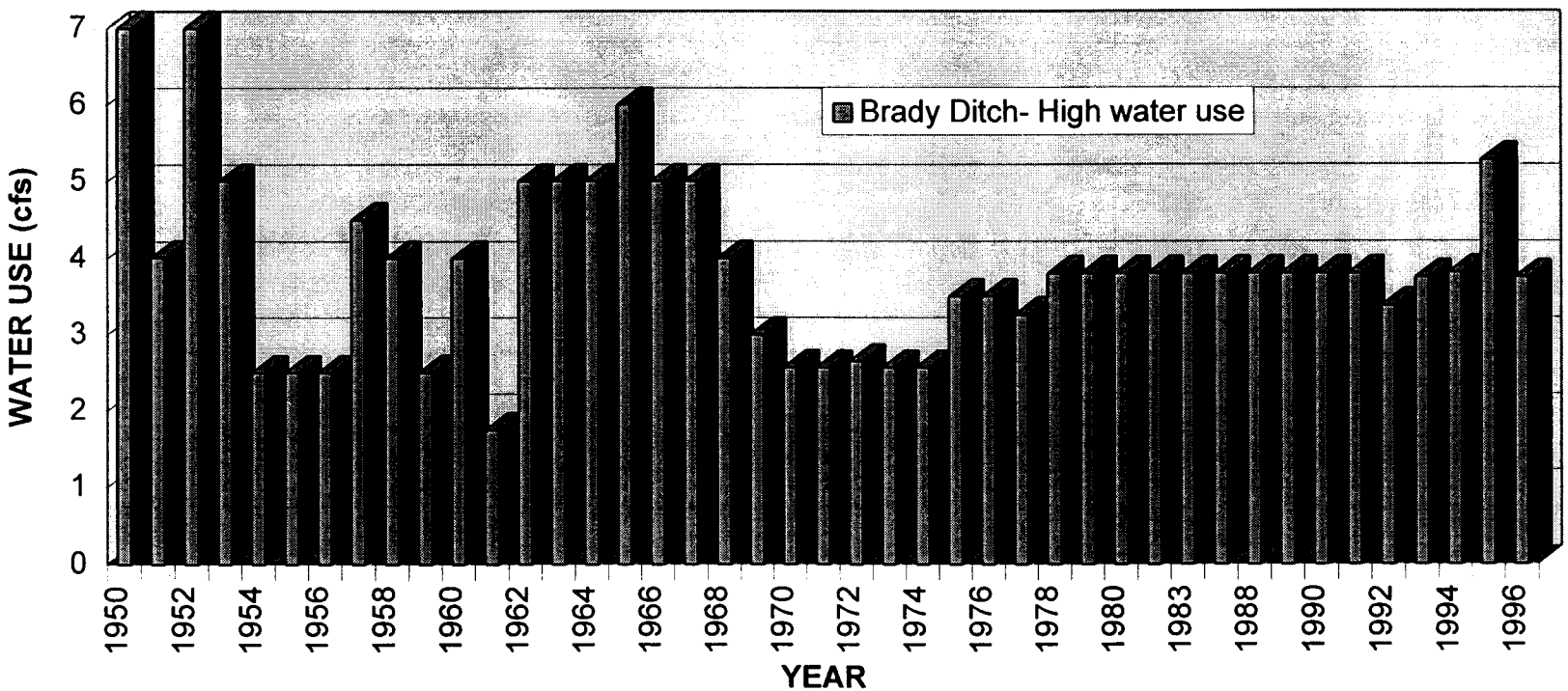
	JOHNSON DECREE FIRST CLASS		COX DECREE		
PARA. #	WATER USER / DITCH	FLOW AMOUNT	WATER USER / DITCH	FLOW AMOUNT	
1	City Ditch, Spring Ditch and S.E. Field Ditch	39.225	Moroni IC	39.0375	
			L A Peterson	0.1875	
				39.225	
2	Seeley Ditch	1.5	McArhtur Frandsen D	1.375	
			W L Madsen Est.	0.125	
				1.5	
3	Frandsen Ditch	5.25	McArthur Frandsen D	4.9375	
			John T Olsen	0.25	
			Jens Peterson	0.0625	
				5.25	
4	McArthur Ditch	0.875	Moroni - Mt Pleasant IC	0.875	
5	J M Turpin	1.825	Miner-Turpin D.		
	M Miner		J Obern	0.29375	
	J W Pritchett		W Terry	0.0375	
	A Madsen		F & J Young	0.09375	
	P R Young		J W Christensen	0.0375	
	J Obern		A U Miner	0.79375	
	O T Terry		Mrs L Turpin	0.3375	
			McArthur Frandsen D.	0.03125	
			Moroni - Mt Pleasant IC	0.2	
				1.825	
6	Mill Ditch	0.35	O Miner	0.1	
			E A Day	0.05	
			V Stewart	0.05	
			J H Sanderson	0.05	
			J Anderson	0.05	
			H Rasmussen	0.05	
				0.35	
7	Miner Ditch	0.075	O Miner	0.05	
			O Terry	0.025	
				0.075	
8	Howell Ditch	0.125	E W Howell	0.125	
9	Fairview City Ditch	4.0625	Sanpitch Fariview City D.	??	**2/17/80 ??**
			Moroni Mt Pleasant IC	1.01875	
			A F Reynolds	0.01875	
			Brady Ditch	0.6125	
			C Olsen	0.01875	
			H Pherson	0.01875	
			O Miner	0.05	
			J W Christensen	0.025	
			J L Mower Est	0.025	
			J W Mower	0.0375	
			A Cheney	0.0125	
			H Rasmussen	0.01875	
			S S Nielson	0.0375	
			R E Hansen	0.0125	
				1.90625	**Total without ??**
10	Matilda Mower Ditch	0.125	Moroni City	0.0625	
			E J Curtis	0.0625	
				0.125	

11	Hans Anderson Ditch	0.125			**Left out ??**
12	Grave Yard Ditch	2.1875	Graveyard Ditch (11)		
			J Christensen	0.1625	
			R L Anderson	0.225	
			R Sanderson	0.125	
			C Fowles	0.2	
			C Olsen	0.39375	
			H Pherson	0.1375	
			F Peterson	0.21875	
			J Peterson	0.1625	
			W Brady	0.1	
			E Cox	0.0625	
			B Brady	0.175	
			A Cox	0.25	
			C A Peterson	0.10625	
				2.31875	**Too high ??**
13	Brady Ditch	1.375	Brady Ditch (12)	??	**1.46 1/2 /80 ??**
14	John L Mower Ditch	0.25	Rasmussen etal (13)	0.25	
15	Meadow Ditch	1.8125	Meadow Ditch (14)	1.8125	
16	East Milburn Ditch	2.875	East Milburn Ditch (15)	2.875	
17	Stewart Ditch	0.075	G Stewart (16)	0.075	
18	Jones Ditch	0.1625	Brady Ditch (17)	0.08125	
			Moroni Mt Pleasant (17)	0.08125	
				0.1625	
19	W Milburn Ditch	1.75	W Milburn Ditch (18)	1.75	
20	Milburn IC Ditch	8.875	Milburn I C (19)	8.875	
21	Nielsen N Frk Ditch	1.75			**Left out ??**
22	George H Mower Ditch	1.75			**Left out ??**

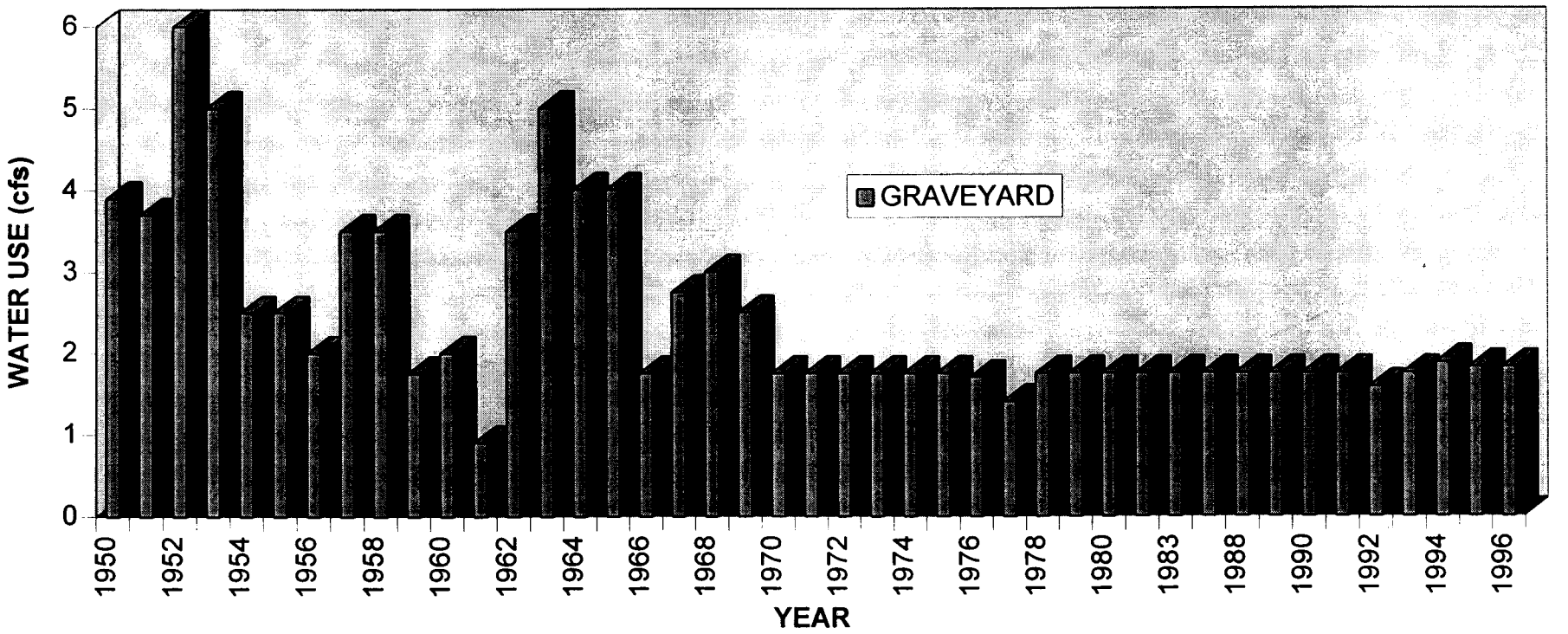
BRADY DITCH AVERAGE WATER USE 1988-1996



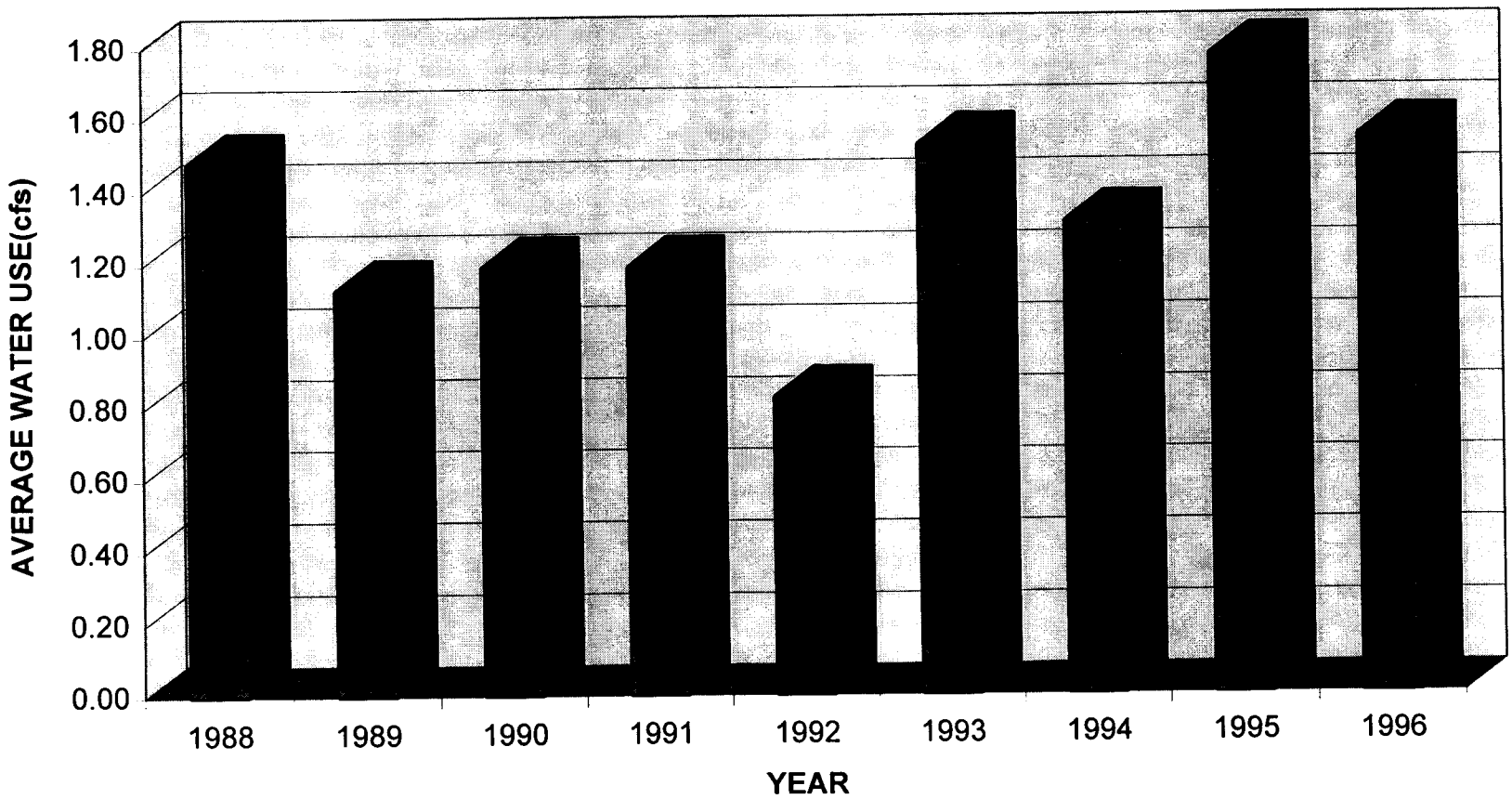
HIGHEST AMOUNT OF WATER USE BY YEAR



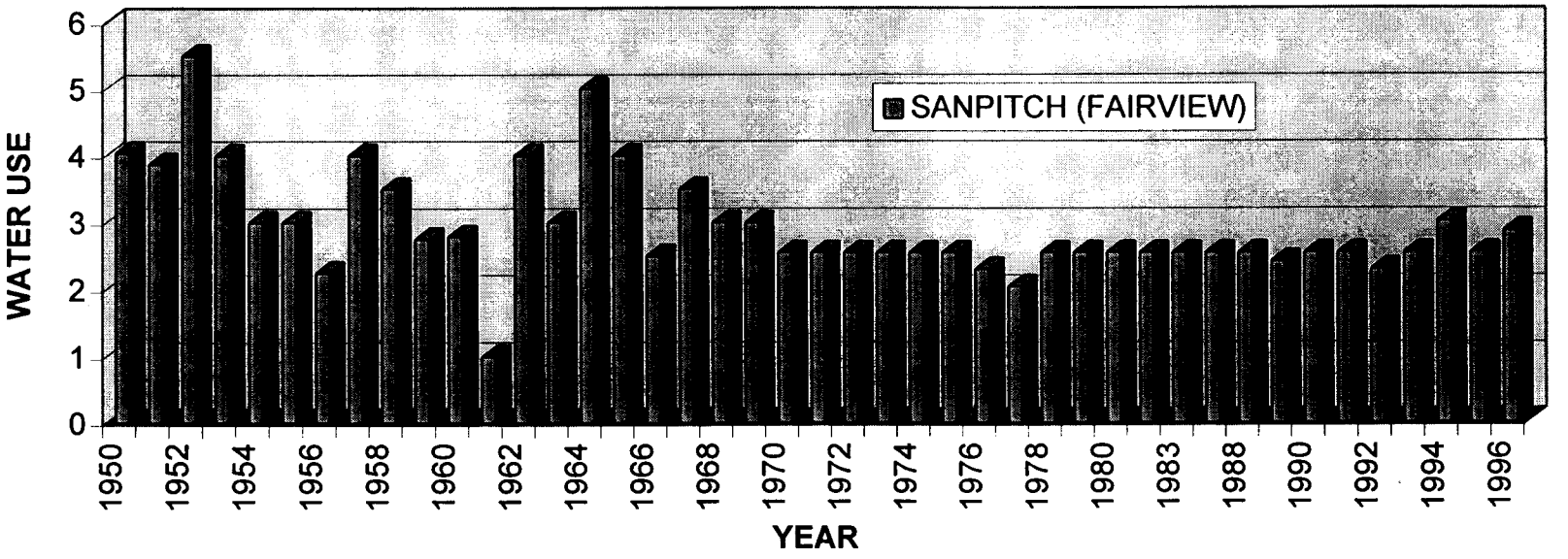
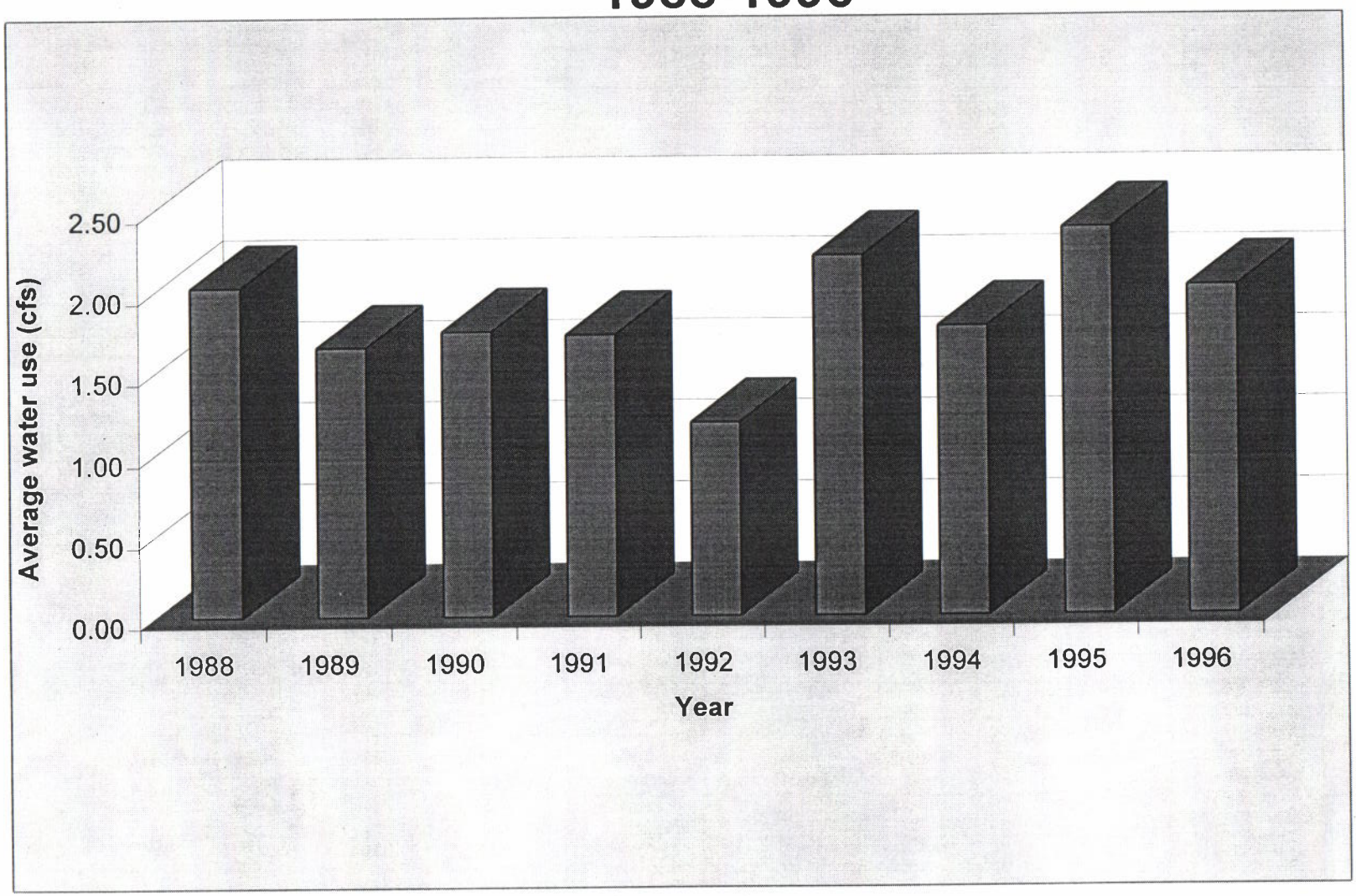
HIGHEST AMOUNT OF WATER USE BY YEAR - GRAVEYARD



GRAVEYARD DITCH AVERAGE WATER USE
1988-1996



HIGHEST AMOUNT OF WATER USE BY YEAR
SANPITCH



Sanpitch City (Fairview) Avg. Water Use (cfs) 1988-1996