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**WATER RIGHTS
SALT LAKE**

Lee H. Sim, PE
State of Utah
Department of Natural Resources
Division of Water Rights
1594 West North Temple, Suite 220
Box 146300
Salt Lake City, Utah 84114-6300

RE: Water Rights of Brady Ditch Irrigation Company, Fairview, Utah

Dear Mr. Sim:

My Family has owned part of the Brady Ditch for almost 100 years. At this time we are in the process of having our interest in the Brady Ditch deeded out of the company. Before our interest in the Brady Ditch is deeded to us we want to make sure that the water rights are in order.

Historically the Brady Ditch has been allowed 6 1/2 cfs under Water Right 65-3240. For about 60 years the total decreed water right, including the 6 1/2 cfs under 65-3240, of Brady Ditch totaled about 11 cfs. The 1922 proposed determination for the Sevier River System (Cox Decree adjudication), which is based on what is required for the irrigated acreage, is 11.20 cfs maximum and 4.89 cfs minimum flow, with a priority date 1872. To my knowledge no other water right owner ever challenged this total. I am not aware of any water users challenging it now.

Now the Brady Ditch water right is only being allowed a total of 2.81 cfs.

Historically the combined flows of the Brady and Sheep Ditches water rights, approximately 11.2 cfs for Brady Ditch and 5 cfs for Sheep Ditch, required a dry dam in the Sanpitch River. It has probably been a dry dam for more than 20 years because my father, George Day, always referred to the diversion for the Brady and Sheep Ditches as a "dry dam" in the Sanpitch River and he was associated with the Brady Ditch from 1925. Before Larry Rawlings became commissioner the river would be dammed dry and all of the flow diverted into the Brady Ditch. To my knowledge, no one down stream ever requested that the river commissioner run water by the Brady Ditch dry dam. Many times in late summer I requested the former river commissioner, Perry Jensen, to regulate

flows upstream from the Brady Ditch diversion. Many times this resulted in more water coming to the Brady diversion. Perry never required water to pass our dry dam. I assume that if downstream water rights holders had requested Perry to pass water by our diversion, and if they were entitled to the water, then the river commissioner would have passed the water to them. He never once did so.

Now the Brady Ditch is being required to pass about an equal amount by what had been a "dry dam" for as long as anyone now associated with the ditch can remember. At least 5 cfs minimum diversion right along with extra high flow rights is required for a highly efficient irrigation system to adequately irrigate the 390 acres under the Brady Ditch. The water we are being allowed to divert now is only about 1/2 of what is minimally required for the efficient irrigation of the 625 acres of land served by both the Brady and Sheep Ditches.

Some of the problem with the current situation results from erroneous interpretation of the applicable decrees.

Your letter of March 19, 1997 to Mr. Clyde Mortensen lists the following water rights of the Brady Ditch from the Cox Decree that were originally from the Johnson Decree.

W.R #	Page #	Paragraph # Cox Decree	Paragraph # Johnson Decree	Priority	C.F.S
65-3221	106	9	9 First Class	1872	49/80 = 0.6125
65-3235	107	12	13 First Class	1872	1.46 1/2 / 80 = 0.018 (1.5813)?
65-3240	107	17	18 First Class		6 1/2 / 80 = 0.0813 (6.5)?
65-3258	110	35	2 Sixth Class	1872	2.0
65-3034	76	N/A	N/A	1876	0.23 max; 0.10 min
					Total = 2.81 (4.375 min)?

Water Right 65-3034 is water in the Brady Ditch that did not originate from the Johnson Decree. Kirk Forbush and Larry Rawlings found this in the Cox Decree and added it to your table. I was already aware of this water right from previous research.

I agree with your interpretation that Brady Ditch Water Right 65-3240 for 6 1/2 cfs in the Cox Decree derives from the Jones Ditch in the Johnson Decree and originally was 6 1/2 / 80 cfs.

I disagree with your interpretation of Water Right 65-3235 at Page 107, Paragraph 12, in the Cox Decree. The Cox Decree describes the right as

"1.46½/80 cfs." You have interpreted this to be 1.465/80 or 0.018 cfs. Interpretation of a number with both a decimal and fraction is difficult at best. The use of both a decimal and fraction is improper in mathematics. I believe this is a simple typing mistake. The decimal (or period) should be a dash. It appears this should be 1-46½/80. There are no other shares listed from page 104 to 111 of the Cox Decree with a combined decimal fraction. All listings are in even cfs, and even or fractional parts of 80.

Water Right 65-3235 at page 107, paragraph 12, of the Cox Decree originates from Page 14, paragraph 13, of the First Class award of the Johnson Decree. At that point in the Johnson Decree the Brady Ditch was awarded 1-30/80 second feet of water. During the time span between the Johnson and the Cox Decrees many shares were being traded between the various ditches along the upper stretch of the Sanpitch River. My research indicates that the Brady Ditch was adding, not subtracting shares during this time. I believe that by the time of the Cox Decree that the 1-30/80 cfs had increased to **1-46½/80 cfs**. I am certain that the 1-30/80 cfs was not reduced to 1½/80 cfs. If this were the case then there would be a whole listing in the Cox Decree showing where all the water was distributed to other ditches or individuals. This listing would be similar to the listings at page 106, paragraph 9, where water rights awarded by the Johnson Decree to the Fairview City Ditch were distributed to other ditches and individuals including the Brady Ditch Water Right 65-3221 of 49/80 cfs.

As you can see, the difference in interpretation between 0.018 cfs and 1.5813 cfs is very great and would be a tremendous loss to the Brady Ditch water right. This water is also First Class from the Johnson Decree and thus of the highest priority in the river. Such a loss would result in about half of the land becoming non-irrigated, which would cause a huge devaluation of property values. This land has been irrigated for almost 130 years.

If the State Engineer's Office can not make a determination of 1.5813 cfs for Water Right 65-3235, then please let me know what further evidence and procedures are required to get this determination.

The 1922 proposed determination made by the State Engineer for the Brady Ditch was 11.20 cfs maximum and 4.89 cfs minimum flow priority date 1872. An 11 cfs total water right for the Brady Ditch was decreed by the Cox Decree and has been accepted for 60 years. This water is required for adequate irrigation of the acreage. All commissioners have always allowed an 11 cfs diversion when available during high flow periods. Recently the Brady Ditch water right has been interpreted by the State Engineer's Office to be only a 2.81 cfs total water right. This is a tremendous reduction not only of the water right but also of the historical amount of water that has been diverted. I'm asking that a determination be made for the Brady Ditch water right. Based on my research and experience, as indicated above, I'm asking that the Brady Ditch water right

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be determined to be 4.375 cfs minimum (primary Johnson Decree water right) and a maximum diversion right of 11 cfs during high water periods.

Please note that I am not representing the Brady Ditch Irrigation Company in this letter. The individual ownership of Brady Ditch Company Stock and the individual ownership of former Sheep Ditch water rights are making this request. Thanks for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Leon R. Day".

Leon R. Day, PE

Cc: Clyde Mortensen, Fairview
Wendell Locke, Fairview
Tom Day, Mt Pleasant
Dan Brinkerhoff, President, Brady Ditch Company, Fairview
Shaun Draney, Snow, Christensen & Marteneau, SLC