

**Review and Determination
ALASKA DEPARTMENT OF NATURAL RESOURCES
Water Resources Section**

**Certificate of Appropriation
ADL 44626-A Amendment**

To: Tom Barrett
From: Lesli Schick

Date: June 28, 2024
File: ADL 44626-A

The subject water right case file has been reviewed for accuracy and conformance with statutes and regulations. The following comments, recommendations, or corrections are presented.

Background:

ADL 44626-A is a certified water right from a declaration of appropriation (“grandfather rights”) for withdrawals from Ship Creek for the public water supply for the City of Anchorage (City). Certificate No. 1533 was issued by the Department of Natural Resources (DNR) on December 18, 1974, for 7.2 million gallons per day from Ship Creek with the priority of appropriation listed as December 31, 1949.

A routine file review of ADL 44626-A occurred during the adjudication of an amendment to a separate water right on Ship Creek (ADL 53292). It was noted that there appears to be a potential error in the priority of appropriation date on the Certificate of Appropriation of Water, Certificate No. 1533. A letter from the certificate holder, dated April 14, 2000, requests a review of the priority date by the DNR Water Section. The letter has not been responded to.

This Review and Determination is occurring only to decide if the certificate for ADL 44626-A should be amended to correct the priority of appropriation date.

Casefile Documents Physically in the DNR Casefile ADL 44626-A on April 1, 2024:

July 6, 1966:	Letter from City of Anchorage with enclosures listing the water data from Ship Creek for March 1961 through June 1966 for the City of Anchorage.
July 13, 1967:	Declaration of Appropriation received for Ship Creek.
No date (n/d)	Two pages of yellow lined note paper with notes. One page provides: “Results of Meeting” ”1. Diversion data will be supplied by military.” “2. Need city’s diversion data.” Second page provides computations and lists the available water records.
n/d	Typed page with Ship Creek water availability tabulated for 1953-1964.
n/d	Typed page entitled “Diversion-From Water Supply Papers /Average/,” covers the years 1951-1964 in cubic feet per second.
n/d	Hand plotted graph entitled “City of Anchorage Water Supply Ship Creek.” X axis is from March 1961 to June 1966 and the Y Axis is labeled “Stream Flow in Millions of Gallons.”
July 12, 1974	Public notice for two Declarations of Appropriation [ADL 44626-A and ADL 44626-B]. Posting expired August 1, 1974 and was posted in the following post offices: Main Post Office-International Airport, Eastchester Station, Federal Station, Mt View Station and Spenard Station. Notice CC’d to the Alaska Department of Environmental Conservation in Juneau and the Alaska Department of Fish & Game (ADFG) in Anchorage. Public notice notes 20 million gpd from Ship Creek.

- July 29, 1974 Comments received from ADFG Commissioner James W Brooks. Subject: Certificates of Appropriation, ADL 44626, City of Anchorage Water Utility, Ship Creek & others. Concerns about minimum flows being maintained in Ship Creek for salmon. States that flows should not be below 60 cfs in summer and fall and not below 10 cfs in winter or early spring.
- August 6, 1974 Letter from DNR to City of Anchorage Water Utility, Re: Certificate of Appropriation, Nos. 1360 and 1361, ADL 44626, ADL 50912. Cover letter for enclosed water right certificates, P.S. at bottom of letter states "We are enclosing copy of a memo from the Department of Fish and Game regarding their concern for fishery resource." Copy of certificate not in casefile. The DNR Certificate Logbook notes the following for Certificate No. 1360:
 City of Anchorage Water Utility
 3000 Arctic Boulevard
 Anchorage, Alaska 99503
 31 million gallons per day:
 20 million gpd from Ship Creek
 11 million gpd from 6 drilled well
 City of Anchorage water distribution system.
Point of Taking:
Ship Creek, with dam, reservoir and pipeline intake in NE1/4 protracted Sec. 16, T13N, R2W, SM;
Well No. 1 in Well Site No. 1, SW1/4 Sec 16, T13N, R3W, SM;
Well No. 2 in Lot 54, Merrill Field Lease Lots, Sec. 20, T13N, R3W, SM;
Well No. 3 in Tract B, Merrill Field Lease Lots, Sec. 17, T13N, R3W, SM;
Well No. 4 in SE1/4SW1/4 Sec. 9, T13N, R3W, SM;
Well No. 5 in City of Anchorage Water Utility Tract, Sec. 25, T13N, R3W, SM;
Well No. 8 in Goose Lake Well Site, SW1/4 Sec. 21, T13N, R3W, SM.
Point of Use: City of Anchorage water distribution system.
Date Use Began:
 Ship Creek Dam – 12/31/1951
 Wells – 12/31/1955
 Issued: August 5, 1974
 ADL 44626
 Hand written notes: "Certificate Amended 12-18-74 to delete Ship Creek water rights (see now Certificate 1533)."
- November 13, 1974 Letter from F.J. Keenan, DNR Director, by Robert F Bursiel, Water Planning Engineer, to Dave Skitt, Manager, City of Anchorage Water Utility. Letter documenting phone conversation from August 1974: Certificate 1360 had been issued in error for the quantity of water for Ship Creek and that the certificate would be amended by DNR to "conform to consumption figures prior to July 13, 1967" and requesting water data records. Letter explains, "The subject application dated July 13, 1967, is a filing for grandfather water rights. We may only issue that quantity being used at that date or prior to that date. Water quantity now being used in excess of the quantity used before July 13, 1967, should be applied for by the City and when issued, will have a more recent priority date, which is the date the application is filed with the Alaska Division of Lands." The letter requests the return of the original Appropriation of Water, No. 1360.
- November 20, 1974 Tabulation from Ken Haugan, Water Plant, to Mr. Dale Nelson [Colonel Nelson, Fort Richardson] with water data broken down by month for 1966

and 1967. Entitled "City Water – From Our Records." Appears to be data from Fort Richardson on water use by the City of Anchorage.

- December 16, 1974 Memorandum from Robert F Bursiel, DNR Water Planning Engineer, to casefile, Subject: Ship Creek Water Appropriation. Memo explains that Colonel Nelson advised the DNR water section that the issued water amounts appear to be in error. Memo states:
- Colonel Nelson provided water use records of the Army Water Plant which showed a maximum water use of 7.2 mgd for the City and a maximum use of 6.4 mgd for the military prior to the closing date for grandfather water rights. Issuance of the following grandfather water rights was agreed to: 6.4 mgd, October 12, 1941, Fort Richardson and 7.2 mgd, December 31, 1946, City of Anchorage. Water use records to date showed a maximum use by the Army as 7.5 mgd and the City as 10.5 mgd. Therefore, all parties agreed that the difference between grandfather water use and the present use (Army 1.1 mgd and the City 3.3 mgd) will have identical priority dates which shall be July 13, 1967.
- Representatives of the City agreed to return Certificate No. 1360 for amendment and to provide information if any change was to be made in the grandfather date of December 31st.
- December 18, 1974 Certificate of Appropriation of Water, Certificate No. 1533 issued for 7.2 million gallons per day from Ship Creek for the municipal water supply. Priority date is listed as December 31, 1949.
- n/d Small typed note on 8x5 piece of paper with:
ADL 44626 – Certificate No. 1533
TO FILE:
This water deleted from Certificate No. 1360 by amendment on 12-18-74 and corrected as to quantity, as accepted in conference between Army, Anchorage Water Utility and Water Resources of 12/5/74.
RFB
- December 1975 Graph entitled "Flow In Ship Creek Near Anchorage (At Military Diversion Dam)". Shows the average monthly flow and lowest average monthly flow from 1947-1969. Handwritten note "1947-2000 (unadjusted for diversion) Monthly Mean Flow".
- May 12, 1983 Certified letter from Margaret J Hayes, District Manager by Bill E Wright, DNR Assistant Engineer to the Municipality of Anchorage, requesting water use data be submitted.
- October 14, 1983 Letter from Anchorage Water & Wastewater Utility (AWWU) to Gary Prokosch, DNR-Water. Appears to be letter that accompanied the relinquishment of ADL 54852.
- October 24, 1983 Attestation from Gary J Prokosch to File detailing call with Joe Nicholson, AWWU, in regard to his letter dated October 14, 1983. Explains that Mr. Nicholson understands that ADL 54852 is relinquished, any new application will have a priority date of the date received by DNR and any existing certificates with surface and subsurface sources on them will be separated into separate casefiles.
- January 19, 1988 Copy of letter from AWWU to Colonel Alexander Johnston, Sixth Infantry Division, Fort Richardson. Letter received by DNR on January 22, 1988. Letter pertains to Fort Richardson requiring AWWU to purchase Ship Creek water from the Army.
- September 29, 1988 Report entitled "Review of Documents, Ship Creek Water Rights and Diversion Dam" by Burr, Pease & Kurtz dated September 29, 1988. Report

- written by Thomas E. Meacham of Burr, Pease & Kurtz for AWWU. [The enclosures are not included, see entry below dated April 14, 2000.]
- n/d Inventory of Dam Information for the Ship Creek Dam. Includes the Ship Creek water used by the Army and MOA for fiscal year 1995.
- March 1997 Report entitled "A Chronology of Water Use and Water Rights on Ship Creek" by the U.S. Army Alaska, dated March 1997. Report compiled by William A. Quirk III, biologist for the U.S. Army Alaska Environmental Resources Department, Fort Richardson, Alaska.
- June 30, 1997 Report entitled "Ship Creek Water Balance / Water Use Report" by Stan Carrick of the DNR Alaska Hydrologic Survey for the Municipality of Anchorage, Heritage Land Bank, Ship Creek Enhancement Project dated June 30, 1997.
- April 14, 2000 Letter from Mark Premo, AWWU General Manager, to Gary Prokosch, DNR Water Resource Section. AWWU requests that DNR review the certifying documents for ADL 44626-A on the validity of the priority date of December 31, 1949 and not 1921 when it had established an appropriation. Attached to the letter is a white three ring binder with a copy of the September 29, 1988 report and all of the enclosures.
- February 20, 2019 Certified copy of Certificate of Appropriation of Water, Certificate No. 1533, recorded by DNR-Water in the Anchorage Recording District.

Documents Added to the Casefile in 2024

- September 11, 1915 *Cook Inlet Pioneer* newspaper article entitled "Government to Install Permanent Water System."
- November 9, 1915 *Cook Inlet Pioneer* newspaper notice from J.A. Moore, Townsite Manager.
- September 1916 Map of Anchorage, Alaska by the Sanborn Map Company, New York. The map has an inset entitled "Water Supply" and "Fire Dept" describing in detail the water supply source and water related infrastructure.
- December 11, 1917 *Alaska Railroad Record*, Vol II, No. 5, article entitled "Statement as to Water Supply Plant."
- April 19, 1919 Presidential Proclamation No. 1519 by President Woodrow Wilson.
- October 27, 1920 *Anchorage Daily Times* article entitled "Data Provided on Local Incorporation." Article includes partial list of property to be turned over to the City if incorporation passes, including the sewer system and water distributing system.
- November 1, 1920 *Anchorage Daily Times* article entitled "Incorporation to be Decided by the Voters." The article includes a letter from Col. F. Mears, Chairman and Chief Engineer, AEC, confirming the list of property in the October 27, 1920 article to be turned over to the incorporated city.
- December 1973 Report entitled "Anchorage Water Sources," prepared for the Anchorage Water Utility and Central Alaska Utilities by Tryck, Nyman & Hayes.
- 1986 *Patterns of the Past: An Inventory of Anchorage's Historic Resources* by Michael Carberry & Donna Lane, Municipality of Anchorage Community Planning Department.
- December 9, 1996 Memorandum from Robert LeVar, Manager of AWWU Treatment Division to George O. Robertson, Manager of AWWU Regulatory Affairs Division. Subject: AWWU's Historical Review of the Military's and Anchorage's Ship

Creek Water Rights and Diversion Dam. [This memo was located in the Alaska Hydrologic Survey files for Ship Creek]

Document Analysis

The City submitted a Declaration of Appropriation for Ship Creek to DNR on July 13, 1967. Per 11 AAC 93.020(3), a claim to an existing right is extinguished unless the claim was filed by July 31, 1967, for the Anchorage, Palmer, and Whittier Recording Districts. The Declaration was received prior to the deadline.

Section 7 of the Declaration of Appropriation form asks: "Briefly describe legal basis on which you claim existing water rights, including date beneficial use began." The City responded:

President Proclamation #1519 dated April 6, 1919 established Ship Creek as a watershed for Anchorage townsite water system, water rights were purchased by the City from the Alaska Engineering Commission in 1921.

Although the Declaration of Appropriation indicates both 1919 and 1921 as the dates beneficial use began, the Certificate of Appropriation set the priority of appropriation as December 31, 1949. The casefile does not include any indication that DNR sent a decision document explaining how the 1949 priority of appropriation date was decided, as is likely required as part of the decision summary under AS 46.15.065(c) (previously AS 46.15.135(c)), nor that the City was provided with an explanation of how to object. Adding to the confusion, the memo dated December 16, 1974, states that 1946 would be used for the City priority of appropriation date, without explanation.

The question is what date the priority of appropriation should be. There is documentation for the following dates:

1. 1914: The first year the tent city of Anchorage was established and Ship Creek was used as the water supply of the residents using hand buckets.
2. 1915: Original Anchorage townsite platted and first auction held on July 10, 1915. Water line installation began by the Alaska Engineering Commission (AEC) for the public water system for Anchorage in September.
3. 1917: According to some casefile materials, the year that the water system was completed (see below).
4. 1919: Presidential Proclamation No. 1519, dated April 16, 1919, withdrew Ship Creek from the Chugach National Forest "in order to protect the water supply" of Anchorage.
5. 1921: The year that the water utility with intake in Ship Creek was transferred from the AEC to the City of Anchorage following incorporation. Per the 1920 agreement for incorporation, the AEC would transfer the existing utilities for Anchorage to the City.

The water line installation to connect houses, businesses, and fire hydrants to Ship Creek began in September 1915 (*Patterns of the Past: An Inventory of Anchorage's Historic Resources* by Carberry & Lane, 1986). An article printed in the *Cook Inlet Pioneer and Knik News* entitled "Government to Install Permanent Water System," dated September 11, 1915, notes that the preliminary grubbing and clearing needed for the installation of the permanent water supply system from Ship Creek had begun. A detailed description of the entire system to be installed is included in the article. A notice from the Townsite Manager, JA Moore, printed in the *Cook Inlet Pioneer*, dated November 9, 1915, explained that all persons connecting to the water main were first required to receive a permit to ensure proper supervision of the connection.

In addition to the local newspapers, historic documents describe the water supply system from Ship Creek. The September 1916 *Anchorage, Alaska* map, published by the Sanborn Map Company, states that water mains were laid at a depth of 5' to 6' in 1915 and 1916, with fire

hydrants installed and working. The *Alaska Railroad Record*, Vol II, No. 5 (dated December 11, 1917), page 35, has a breakdown of expenses for the Anchorage water system. The article explains that water utility rates would increase because of debts owed “chiefly because of the lack of revenue during the first year of operation and early in this year.” This reflects what newspapers reported in 1915 and what maps illustrated from 1916: that the public water system withdrawing from Ship Creek was fully functional for all of 1916.

Materials in the casefile from the City, AWWU (April 2000 materials), and military (March 1997 report) that note a 1917 date for the Anchorage water supply system cite a 1973 report entitled *Anchorage Water Sources* by Tryck, Nyman & Hayes. Table 4 of this report contains a chronology of major events in Anchorage and states only “1917 Original ARR water system installed.” There is no citation or documentation accompanying this entry, nor is there any additional information in the report discussing this date.

An additional item to note from the enclosures included with the April 14, 2000 letter from AWWU to DNR-Water is an application from the City to the United States Department of the Interior, General Land Office, notarized on June 7, 1941. The application is for a permit for a right-of-way through public lands for a new pipeline as part of the domestic water supply for Anchorage. The application states that the City has long used Ship Creek as the domestic water supply and that “no appropriation of the waters of Ship Creek antedates the appropriation thereof by this applicant; that the continued use of the said waters of Ship Creek as a domestic water supply for this applicant is essential to the life and health of the community.”

Determination

Per AS 46.15.065 (previously AS 46.15.135), the “priority of the right dates from the day work was begun on the appropriation if due diligence was used in completing the work.” In other words, it is not when the water system was completed, but when the work *began* on the water system that determines the priority of appropriation date.

While residents of Anchorage and the AEC were withdrawing water from Ship Creek in 1914, documentation available shows that the permanent public water supply system was initiated in September 1915. This was the same system that the City took possession of in 1921 following incorporation. Structures were connected to it starting in 1915 and continued until the system was fully established.

Given the available documentation, an amended certificate of appropriation will be issued with a priority date of September 11, 1915; this reflects the earliest date that DNR-Water is aware of work occurring on the appropriation for this water system.

The Amended Certificate of Appropriation, ADL 44626-A, will supersede the following recorded documents:

1. Certificate of Appropriation, ADL 44626, issued on December 18, 1974, and recorded in the Anchorage Recording District as Document No. 2019-005053-0.

A copy of this determination and amended certificate will be posted on the online State of Alaska public notice system and sent by certified mail to the certificate holder and appropriators of record for Ship Creek. The certificate will be recorded in the Anchorage Recording District by DNR-Water following the appeal period (see below).

This decision is effective upon the date of the concurring signature.



Lesli Schick, NRS3

6/28/2024

Date

X I Concur

_____ I Do Not Concur



Tom Barrett, Water Resource Section Chief

7/1/2024

Date

An eligible person affected by this decision of the department may appeal to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received by the Commissioner's Office within thirty (30) calendar days after issuance of the decision under 11 AAC 02.040. The Commissioner may order or deny an appeal within thirty (30) calendar days after issuance of the decision. The Commissioner's decision on appeal, other than a remand decision, is the final administrative order and decision of the department for purposes of appeal to the superior court. An eligible person must first appeal to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department. Requests for reconsideration may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907) 269-8918; or sent by electronic mail to dnr.appeals@alaska.gov.