

**Oregon Water Resources Department**  
**Water Right Services Division**

**Application for Extension of Time**

In the Matter of the Application for an Extension of Time	)	PROPOSED
for Permit G-12642, Water Right Application G-12661, in	)	FINAL
the name of Wolf-Narlan Group, LLC	)	ORDER

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Permit Information

Application:	G-12661
Permit:	G-12642
Basin:	5 – Deschutes / Watermaster District 11
Source of Water:	a well in Crooked River Basin
Purpose or Use:	primary irrigation of 7.1 acres and supplemental irrigation of 232.9 acres
Maximum Rate:	1.5 cubic feet per second (cfs)
Date of Priority:	September 19, 1991 for 1.0 cfs; November 3, 1992 for 0.5 cfs

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***Please read this Proposed Final Order in its entirety.***

*In Summary, the Department proposes to:*

- Grant an extension of time to complete construction of the water system from October 1, 1998, to October 1, 2001.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999, to October 1, 2001<sup>1</sup>.

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.630 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.

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<sup>1</sup>Pursuant to ORS 537.630(5), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and a new or revised claim of beneficial use as deemed appropriate by the Department.

## **ACRONYM QUICK REFERENCE**

Application – Application for Extension of Time  
Department – Oregon Department of Water Resources  
FOF – Finding of Fact  
PFO – Proposed Final Order  
Well – DESC 264  
cfs - cubic feet per second

## **AUTHORITY**

Generally, see ORS 537.630 and OAR Chapter 690 Division 315.

**ORS 537.630(2)** provides in pertinent part that the Oregon Water Resources Department (Department) for good cause shown shall order and allow an extension of time within which irrigation or other works shall be completed or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

**ORS 539.010(5)** instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

**OAR 690-315-0040** provides that in order to approve an application for an extension of time to complete construction or apply water to full beneficial use, the Department shall make the findings in OAR 690-315-0040(1) including a finding that there is “good cause” to approve the extension. OAR 690-315-0040(2)-(4) contains the factors that the Department must consider to make findings that support a “good cause” determination.

## **FINDINGS OF FACT**

1. On August 14, 1996, Permit G-12642 was issued by the Department. The permit authorizes the use of up to 1.5 cfs of water from a well in Crooked River Basin for primary irrigation of 7.1 acres and supplemental irrigation of 232.9 acres. The permit specified actual construction of the well to begin by August 14, 1997, construction of the water system was to be completed by October 1, 1998, and complete application of water was to be made on or before October 1, 1999.
2. On September 18, 2000, a Claim of Beneficial Use was submitted to the Department, requesting issuance of a Certificate.
3. On April 8, 2020, a Request from Assignment by Proof of Ownership from Dean Mills and Michael Mills, to Wolf-Narlan Group, LLC, was submitted for review.
4. On April 8, 2020, Bob Franke, Director and Officer for Wolf-Narlan Group, LLC, submitted an “Application for Extension of Time” (Application) to the Department,



requesting the time to complete construction of the water system be extended from October 1, 1998, to October 1, 2025, and the time to apply water to full beneficial use under the terms and conditions of Permit G-12642 be extended from October 1, 1999, to October 1, 2025. This is the first permit extension requested for Permit G-12642.

5. On May 12, 2020, notification of the Application for Permit G-12642 was published in the Department's Public Notice. No public comments were received regarding the Application.
6. On June 17, 2020, an assignment by proof from Dean Mills and Michael Mills, to Wolf-Narlan Group, LLC, was recorded in the records of the Water Resources Department.

### **Review Criteria [OAR 690-315-0040]**

*In order to approve an Application for an Extension of Time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department must make the findings in OAR 690-315-0040(1)(a) – (d).*

### **Complete Extension of Time Application [OAR 690-315-0040(1)(a)]**

7. On April 8, 2020, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

### **Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]**

8. Actual construction of the well began prior to the August 14, 1997 deadline specified in the permit. Construction of began
9. According to the well log received by the Department on June 28, 1979, construction of DESC 264 (Well) began June 21, 1979.

Based on Finding of Fact (FOF) 7 and 8, the Department has determined that the prosecution of the construction of the well began prior to August 14, 1997.

### **Good Cause [OAR 690-315-0040(1)(d)]**

*The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).*

### **Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]**

*In order to make a finding of "good cause" to approve the extension, the Department shall consider whether the applicant has demonstrated "reasonable diligence" in previous performance under the permit. OAR 690-315-0040(2)(a). In determining "reasonable diligence", the Department shall consider, but is not limited to, the following factors: a) The amount of construction completed within the time allowed in the permit or previous extension; b) The amount of beneficial use made of the water during the permit or previous extension time*

limits; c) Water right holder conformance with the permit or previous extension conditions; and d) Financial investments made toward developing the beneficial use of water.

**Amount of Construction [OAR 690-315-0040(3)(a)]**

*The amount of construction completed within the time allowed in the permit.<sup>2</sup>*

10. Construction of the well began prior to permit issuance.
11. Work was accomplished during the original development time frame under Permit G-12642 is as follows:
  - installed 4,000 feet 5” PVC Mainline; and
  - installed a full circle and a half-circle pivot.
12. Since October 1, 1999, the permit holder has upgraded the system with the following:
  - a full-circle and half-circle Reinke pivot;
  - 3” hand lines;
  - a 50 hp and a 25 hp pump; and
  - a 25 hp pump in the Well.

Based on FOF 10, and 11, the Department has determined that work has been accomplished prior to permit issuance and within the time allowed in the permit, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

**Compliance with Conditions [OAR 690-315-0040(3)(c)]**

*The water right permit holder’s conformance with the permit conditions.*

13. The Department has considered the permit holder’s compliance with conditions, and has identified the following concern; annual reports of the amount of water used each month have not been received by the Department by October 1, 1999. The first annual water use report submitted was for water year 2000.

Based on FOF 13, the Department has determined that the permit holder has not demonstrated compliance with following permit condition as required by Permit G-12642:

- “Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements annually or more frequently as may be required by the Director. Further, the Director may require the

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<sup>2</sup> “**Actual Construction**” is defined in OAR 690-315-0020(3)(d)(A)and(B) as physical work performed toward completion of the water system which demonstrates the water right permit holder’s good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.



permittee to report general water use information, including the place and nature of use of water under the permit.”

**Beneficial Use of Water [OAR 690-315-0040(3)(b)]**

*The amount of beneficial use made of the water during the permit time.*

14. A maximum rate of 1.5 cfs of water has been appropriated from the Well for irrigation of 7.1 acres and supplemental irrigation of 232.9 acres every year since 1996.

Based on FOF 14, the Department has determined that beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 1999.

**Financial Investments to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b),(3)(d),(4)(d)]**

15. An approximate total of \$325,000, has been invested. The costs included items associated with repair, maintenance, and upgrading costs of a system which are not “actual construction” under this permit and therefore are not counted towards development. After deducting these costs, the approximate total investment for “actual construction” to date is approximately \$115,000 which is the total projected cost for complete development of this project.

Based on FOF 15, the Department has determined that the permit holder had made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

**Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]**

The Application provides evidence of progress towards completion of the water system; a financial investment has been made; the permit holder has not demonstrated compliance with all permit conditions within the development period authorized by the permit, and; beneficial use has not been demonstrated. The Department has determined the applicant has demonstrated the minimum necessary for the Department to find reasonable diligence towards complete application of water to a beneficial use.

**The Market and Present Demands for Water [OAR 690-315-0040(4)(a-f)]**

*The Department’s determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:*

- (a) *The amount of water available to satisfy other affected water rights and scenic waterway flows;*
- (b) *Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water*

*management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);*

- *(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;*
- *(d) Economic investment in the project to date;*
- *(e) Other economic interests dependent on completion of the project; and*
- *(f) Other factors relevant to the determination of the market and present demands for water and power.*

**OAR 690-315-0040(4)(a)**

The amount of water available to satisfy other affected water rights and scenic waterway flows.

16. A review of the amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit G-12642; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined when an Application for a new water right is submitted.

**OAR 690-315-0040(4)(b)**

Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d).

17. The point of appropriation for Permit G-12642, located within the Crooked River Basin, is within the Upper Deschutes Ground Water Mitigation Area located within a limited or critical groundwater area.
18. Crooked River is located above Deschutes Scenic Waterway.
19. The point of appropriation is not in an area listed by the Department of Environmental Quality as a water quality limited stream.

**OAR 690-315-0040(4)(c)**

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.

20. Crooked River is located within an area ranked “high” for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.

**OAR 690-315-0040(4)(d)**

Economic interests dependent on completion of the project.

21. An approximate total of \$325,000 has been invested in the project.



**OAR 690-315-0040(4)(e)**

Other economic interests dependent on completion of the project.

22. The use of water under this permit provides benefits to the regional economy.

**OAR 690-315-0040(4)(f)**

Other factors relevant to the determination of the market and present demand for water and power.

23. No other factors relevant to the determination of the market and present demand for water and power have been identified.

**Fair Return Upon Investment [OAR 690-315-0040(2)(f)]**

24. The use and income from the permitted water development will likely result in reasonable returns upon the investment made to date.

**Other Governmental Requirements [OAR 690-315-0040(2)(g)]**

25. Delay in the development of this project was not caused by any other governmental requirements.

**Unforeseen Events [OAR 690-315-0040(2)(h)]**

26. The current permit holder purchased the property in 2013, with the understanding that the Claim of Beneficial Use had been submitted in 2000. The current permit holder has been submitted annual water use reports every year since acquiring the property. It was not until the Department pursued cancelation of the permit for failure to submit annual water use reports within the development time frame under the permit, that the current permit holder became aware of the deficiency in previous water use reporting.

**Denial of the Extension Will Result in Undue Hardship [OAR 690-315-0040(2)(i)]**

27. A denial of the extension would result in the loss of an integral part of the permit holders operation.

**Good Faith of the Appropriator [OAR 690-315-0040(2)(c)]**

28. The Application provides evidence of good faith of the appropriator under Permit G-12642.

Based on FOF 8, 9, 10, 11, 14, 15, and 10, the Department has determined that the applicant has shown good faith and reasonable diligence.

**Duration of Extension [OAR 690-315-0040(1)(c)]**

*Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.*

29. As of April 8, 2020, the Application describes that construction was complete, and complete application of water was accomplished prior to October 1, 1999. An extension of time is necessary to demonstrate compliance with the condition requiring annual water use reports.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2025, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit G-12642 is both not reasonable and not necessary.

Based on FOF 13, 14, 26, and 29, the Department has determined an extension of time until October 1, 2001, is both reasonable and necessary.

**Good Cause [OAR 690-315-0040(1)(d)]**

*The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).*

The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

**CONCLUSIONS OF LAW**

1. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
2. The applicant has complied with the construction timeline requirements to begin construction as required by ORS 537.630, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. Based on Finding of Facts 7 through 28, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2001, as required by OAR 690-315-0040(1)(c).



4. The applicant can complete the project within the time period requested for the extension on the project, but the extension is granted only for the reasonable time necessary to complete water development and apply water to beneficial use. OAR 690-315-0050(5).
5. The applicant has demonstrated good cause for the extension.

## **PROPOSED ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Extend the time to complete construction of the water system under Permit G-12642 from October 1, 1998, to October 1, 2001.

Extend the time to apply water to beneficial use under Permit G-12642 from October 1, 1999, to October 1, 2001.

DATED: July 21, 2020



Dwight French, Administrator,  
Water Right Services Division

*If you have any questions,  
please check the information  
box on the last page for the  
appropriate names and  
phone numbers.*

### Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100 and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than **September 4, 2020**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.
2. A written protest shall include:
  - a. The name, address and telephone number of the petitioner;
  - b. A description of the petitioner's interest in the proposed final order and if the protestant claims to represent the public interest, a precise statement of the public interest represented;
  - c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;
  - d. A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
  - e. Any citation of legal authority supporting the petitioner, if known;

