



## State of Washington REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

Change Point of Withdrawal

|   |                                    |
|---|------------------------------------|
| <b>PRIORITY DATE</b><br>January 1, 1930 | <b>WATER RIGHT NUMBER</b><br>741-D |
|---|------------------------------------|

|   |                                    |
|---|------------------------------------|
| <b>MAILING ADDRESS</b><br>Norman and Marcella Lublin<br>2270 Road F NE<br>Moses Lake WA 98837 | <b>SITE ADDRESS (IF DIFFERENT)</b> |
|---|------------------------------------|

### Total Quantity Authorized for Withdrawal

|  |                     |   |
|--|---------------------|---|
| <b>WITHDRAWAL OR DIVERSION RATE</b><br>320 | <b>UNITS</b><br>GPM | <b>ANNUAL QUANTITY (AF/YR)</b><br>134.4 |
|--|---------------------|---|

### Purpose

| PURPOSE                | WITHDRAWAL RATE |              | UNITS | ANNUAL QUANTITY (AF/YR) |              | PERIOD OF USE<br>(mm/dd) |
|------------------------|-----------------|--------------|-------|-------------------------|--------------|--------------------------|
|                        | ADDITIVE        | NON-ADDITIVE |       | ADDITIVE                | NON-ADDITIVE |                          |
| Irrigation of 32 acres | 320             |              |       | 134.4                   |              | 04/01 - 10/31            |

### Source Location

| COUNTY                 | WATERBODY   | TRIBUTARY TO | WATER RESOURCE INVENTORY AREA |       |     |           |          |           |
|------------------------|-------------|--------------|-------------------------------|-------|-----|-----------|----------|-----------|
|                        |             |              | AREA                          |       |     |           |          |           |
| GRANT                  | GROUNDWATER |              | 41-LOWER CRAB                 |       |     |           |          |           |
| SOURCE FACILITY/DEVICE | PARCEL      | WELL TAG     | TWP                           | RNG   | SEC | QQ Q      | LATITUDE | LONGITUDE |
| Well 1                 | 161486000   |              | 19                            | 27 E. | 24  | SE¼SE¼    | 47.1197  | 119.3660  |
| Well 2                 | 161483000   |              | 19                            | 27 E. | 24  | SE¼NE¼SE¼ | 47.1210  | 119.3647  |

Datum: NAD83/WGS84

### Place of Use (See Attached Map)

**PARCELS (NOT LISTED FOR SERVICE AREAS)**

161486000

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

SE¼SE¼ of Section 24, T. 19 N., R. 27 E.W.M, except that portion of the SE¼SE¼ described as follows: commencing at the SW corner of the SE¼SE¼ of Section 24; thence east on the south line 168 feet; thence north parallel to the west line, a distance of 141 feet; thence west parallel to the south line 168 feet to the west line; thence south on the west line 141 feet to the point of beginning

### Proposed Works

Two hand dug wells 45-50 feet deep with wheel lines

### Development Schedule

| BEGIN PROJECT | COMPLETE PROJECT | PUT WATER TO FULL USE |
|---------------|------------------|-----------------------|
| Begun         | 11-1-2015        | 11-1-2016             |

### Measurement of Water Use

|   |                                      |
|---|--------------------------------------|
| How often must water use be measured?                 | Weekly                               |
| How often must water use data be reported to Ecology? | Upon Request by Ecology              |
| What volume should be reported?                       | Total Annual Volume                  |
| What rate should be reported?                         | Annual Peak Rate of Withdrawal (gpm) |

### Provisions

These lands lie within the Columbia Basin Project. Should contracts or water rights be issued from the Project that include lands developed under this authorization, these lands will be subject to RCW 90.44.510.

If water from facilities of any legally formed irrigation district or the USBR is used on any or all of the lands described and developed herein as the place of use, the quantities of water withdrawn under this authorization shall be proportionately reduced to correspond to the acreage for which water is not available.

RCW 90.44.510 confirms that should water be supplied to these lands and replaced with Columbia Basin Project Water, the permit or certificate, or portion thereof shall be designated as a standby or reserve water right. The total number of acres irrigated must not exceed the quantity of water authorized by the Bureau of Reclamation and the authorized number of acres under the permit.

#### Wells, Well Logs and Well Construction Standards

All wells constructed in the state must meet the construction requirements of WAC 173-160 titled "Minimum Standards for the Construction and Maintenance of Wells" and RCW 18.104 titled "Water Well Construction". Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard must be decommissioned.

Installation and maintenance of an access port as described in WAC 173-160- 291(3) is required.

#### Measurements, Monitoring, Metering and Reporting

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and

Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

### **Water Use Efficiency**

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

### **Proof of Appropriation**

The water right holder must file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the water right. Elements of a proof inspection may include, as appropriate, contracting with a Certified Water Right Examiner (CWRE) to confirm the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

### **Schedule and Inspections**

Department of Ecology personnel, upon presentation of proper credentials, will have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

### **Findings of Facts**

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that a valid right exists; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Change Application No. CG3-\*00831S, subject to existing rights and the provisions specified above.

### **Your Right To Appeal**

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

| Street Addresses   | Mailing Addresses   |
|--|---|
| <b>Department of Ecology</b><br>Attn: Appeals Processing Desk<br>300 Desmond Drive SE<br>Lacey, WA 98503 | <b>Department of Ecology</b><br>Attn: Appeals Processing Desk<br>PO Box 47608<br>Olympia, WA 98504-7608 |
| <b>Pollution Control Hearings Board</b><br>1111 Israel Road SW Ste 301<br>Tumwater, WA 98501             | <b>Pollution Control Hearings Board</b><br>PO Box 40903<br>Olympia, WA 98504-0903                       |

Signed at Spokane, Washington, this 19th day of August, 2014.




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Keith L. Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

## BACKGROUND

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This report serves as the written findings of fact concerning Water Right Change Application Number CG3-\*00831S. In considering the proposed application for change/transfer, the investigation included, but was not limited to, research and review of (1) appropriate rules and statutes; (2) Ground Water Certificate No. 741-D and other water rights/claims/applications in the vicinity; (3) water well reports and other wells in the vicinity; (4) USGS topographic maps; (5) discussions with Department of Ecology regional program staff; including review by Ecology hydrogeologists.

### Legal Requirements for Requested Change

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#### *Public Notice*

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Columbia Basin Herald on February 20 and 27, 2014 and no protests were received.

#### *State Environmental Policy Act (SEPA)*

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- (a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

## INVESTIGATION

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A field investigation was conducted on June 4, 2014. The applicant's representative was present. The applicant proposes to add one well to the water right. No other change to the water right is proposed.

The property has 32 acres of irrigated timothy hay with wheel lines. Portions of the property are not irrigated. The authorized well has a 10 HP vertical turbine pump with a 15 HP centrifugal booster pump. The proposed well has a 40 HP vertical turbine pump and is currently piped to a portion of the property and is being used for irrigation. No meters are installed on either well. A small 0.5 acre parcel of property in the SW corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  is not owned by the applicant or included in this water right and is subject to its own domestic exempt well.

A second well on the applicant's property serves the domestic residence and the lawn irrigation.

#### Evaluation of the right and Beneficial Use Analysis:

The Washington State Supreme Court, in Okanogan Wilderness v. Town of Twisp and Department of Ecology, 133 Wn.2d 769, 947 P.2d 732 (1997), held that Ecology must determine the extent and validity of a water right that is eligible for change before the Department can approve a change or transfer of the water right. They also found that the existence and quantification of a water right must be determined, including whether or not the water right has been lost for non-use before the Department can approve a change or transfer of the water right. In R.D.

Merrill Co. v. Pollution Control Hearings Board, 137 Wn.2d 118, 969 P.2d 458 (1999), the Supreme Court held that the place of use and point of withdrawal of an inchoate ground water permit may be changed pursuant to RCW 90.44.100.

Approximately 32 acres of the property has been irrigated with wheel lines. The remaining property is dry and not irrigated with the exception of a residence and yard served from a separate exempt well. A small 0.5 acre parcel of the 40 acre legal description is not owned by the applicant.

The primary crop is timothy hay. The Washington State Irrigation Guide confirms that 37.01 inches (3.08 acre-feet) of water is required for alfalfa hay. If applied at 75% efficiency with wheel lines, 4.1 acre-feet would be required. The water right was issued for 4.5 acre-feet per acre. Calculations of water duty were determined by the applicant's consultant. He determined approximately 4.2 acre-feet is the applied water duty for this property.

Typical instantaneous use for irrigation requires 10 gallons per minute per acre. A reasonable use for 32 acres is 320 gallons per minute.

Meters shall be required to be installed on these wells and annual meter readings shall be submitted during the development of this authorization to confirm actual applied water uses. The previous change authorizations required the installation of meters on the source wells.

These lands lie within the Columbia Basin Project. Should contracts or water rights be issued from the Project that include lands developed under this authorization, these lands will be subject to RCW 90.44.510.

If water from facilities of any legally formed irrigation district or contracts with the USBR is used on any or all of the lands described and developed herein as the place of use, the quantities of water withdrawn under this authorization shall be proportionately reduced to correspond to the acreage for which district water is not available.

RCW 90.44.510 confirms that should water be supplied to these lands and replaced with Columbia Basin Project Water, the permit or certificate, or portion thereof shall be designated as a standby or reserve water right. The total number of acres irrigated must not exceed the quantity of water authorized by the Bureau of Reclamation and the authorized number of acres under the permit.

#### Other Rights Appurtenant to the source wells

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The following right is authorized from the proposed well:

Ground Water Certificate 928-D together with change authorization issued June 8, 2011 and change authorization issued April 30, 2014 confirms a right of 260 gallons per minute, 45.6 acre-feet per year for single domestic supply and irrigation of 10.5 acres. This right is authorized from the proposed well located in NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 24. The 2011 change authorization authorized place of use is described as 10.5 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 24, T. 19 N, R. 27 E.W.M. Although the applicant sold and transferred 27 acres of this right to other lands in 2011, he has continued to irrigate all 37 acres of timothy hay, 27 acres without authorization of permit. The applicant has contacted the USBR to obtain a Pothole Bank Storage Contract for the unauthorized use.

The previous authorizations for change also required the installation of measuring devices and metering requirements. These provisions have not been complied with. The applicant has scheduled meter installation this fall.

Applications for change of water right permits and certificates are governed by RCW 90.44.100, which states in part that: the holder of a valid right to withdraw public ground waters may, without losing his priority of right, construct wells at a new location in substitution for, or in addition to, those at the original location, or he may change the manner or the place of use of the water. Such amendment shall be issued by the Department only on the conditions that; (1) the additional or substitute well or wells shall tap the same body of public ground water as the original well or wells; (2) use of the original well or wells shall be discontinued upon construction of the substitute well or wells; (3) the construction of an additional well or wells shall not enlarge the right conveyed by the original permit or certificate; and (4) other existing rights shall not be impaired. The Department may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment.

The original well was constructed around 1930. The information in the file indicates the well was a 30" diameter hand dug well constructed to a depth of 48 feet.

The proposed well was constructed around 1945. The information in the file indicates the well was a 30" diameter hand dug well constructed to a depth of 47 feet.

Both wells are constructed in the upper sedimentary unit and are in the same body of public ground water.

#### Impairment Considerations

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"Impair" or "impairment" means to 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, and/or 2) to prevent the beneficial use of the water to which one is entitled, and/or 3) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flow levels established by rule (POL-1200); and/or 4) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150). Demonstration of impairment would require evidence of a substantial and lasting or frequent impact reflecting such conditions.

This proposed change in the point of withdrawal shall not increase the amount of water withdrawn from the aquifer nor will it increase the land proposed for irrigation or expand the right. The added well will not impair existing water rights.

#### Public Interest Considerations

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The proposed change in point of withdrawal will not be contrary to the public interest.

#### Conclusions

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There is a water right available for change/transfer under Ground Water Certificate No. 741-D.

When considering an application for change to a water right, Ecology must determine that the proposed change can be made without detriment or injury to existing water rights. Factors considered when determining potential impact include the following:

#### No Impairment to Existing Rights:

It is not anticipated that the proposed change/transfer would cause impairment to existing water rights.

No Detriment to the Public Welfare:

There has been no public expression of protest or concern regarding the subject proposal, and no findings through this investigation indicate that there would be any detrimental impact to the public welfare through issuance of the proposed change/transfer.

No Enhancement of the Original Right:

No withdrawal of water over and above what has been put to beneficial use would be authorized through approval of this change.

Same Source of Water:

The ground water to be withdrawn is supplied by the same body of public water.

**RECOMMENDATIONS**

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Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

*Purpose of Use and Authorized Quantities*

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

320 gpm

134.4 acre-feet per year for agricultural irrigation of 32 acres

Place of Use

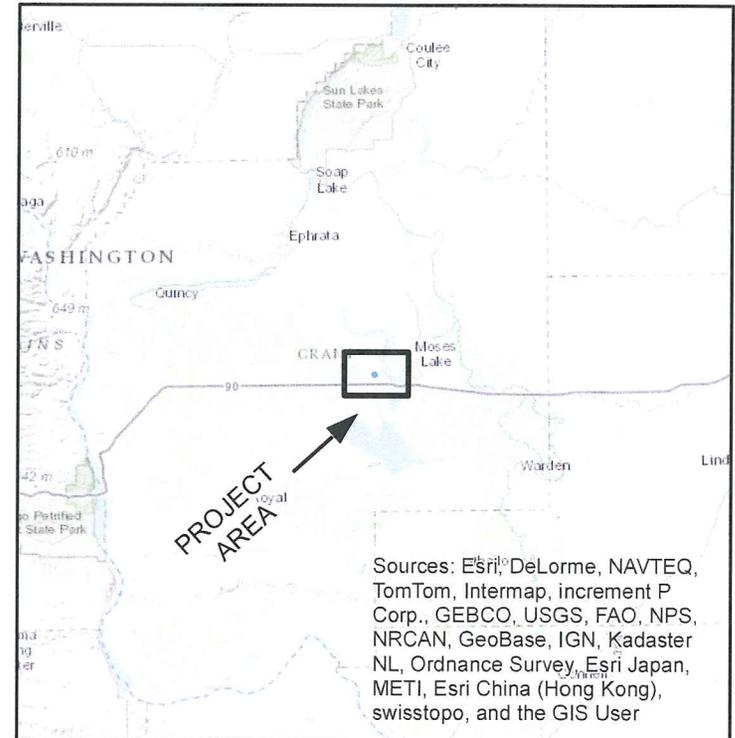
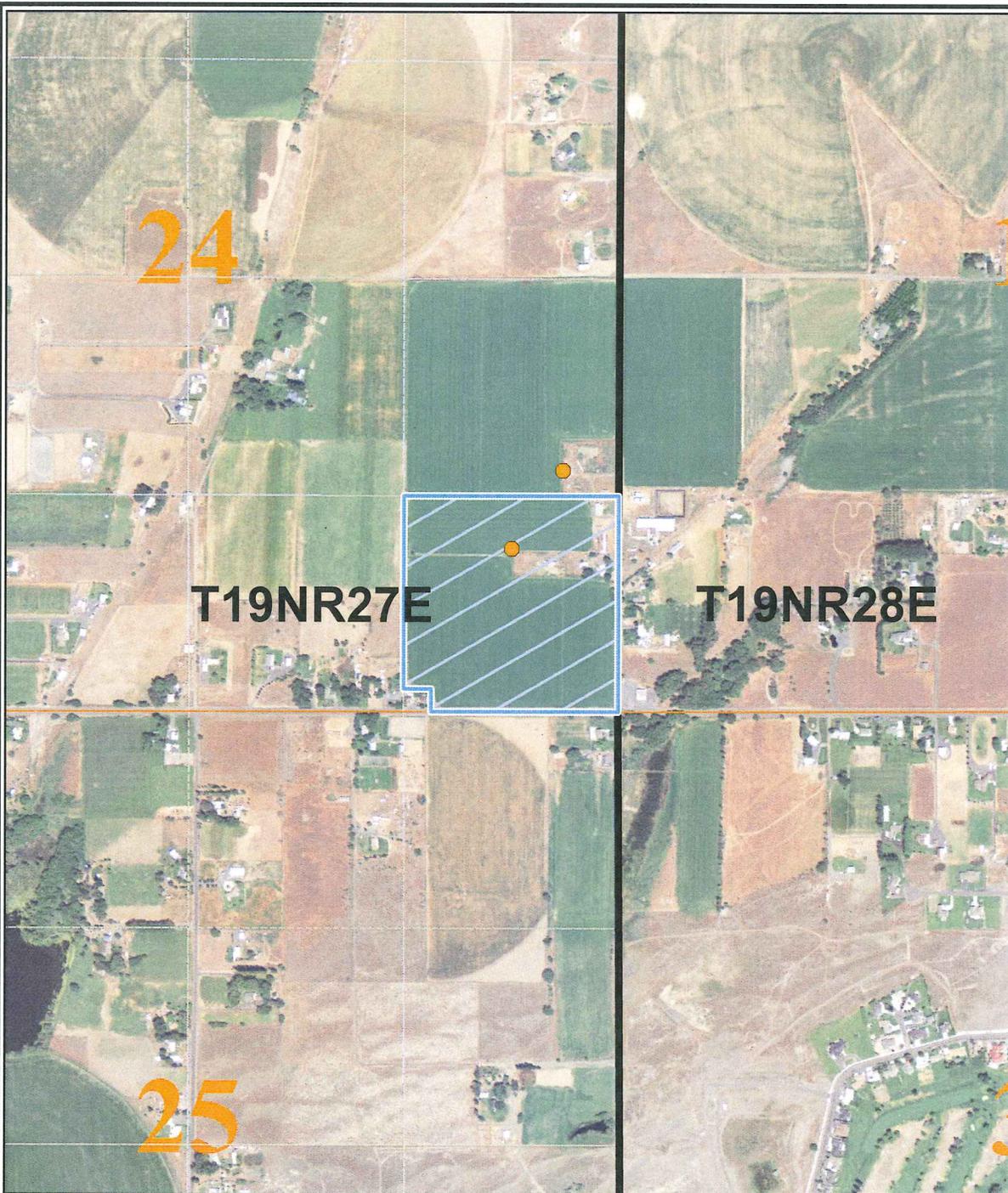
As described on Page 1 of this Report of Examination.

  
Kevin Brown, Report Writer

  
Date

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Norman & Marcella Lublin  
 741-D  
 T19N/R27E

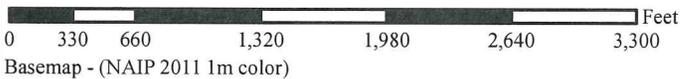


ATTACHMENT 1

**Legend**

-  Authorized Place of Use
-  Townships
-  Sections
-  Authorized Point of Withdrawal

Basemap - (ESRI US Topographic Maps)



Basemap - (NAIP 2011 1m color)



Map Date: 7/18/2014



**Comment:**

Place of use and source locations are as defined within the Report of Examination cover sheet for the document identified in the header above.