UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8, MONTANA OFFICE
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1276861 - R8 SDMS

Ref: 8MO

April 22, 2014

MEMORANDUM

SUBJECT: General Coordination Memorandum of Understanding Between the U.S. Forest Service and the U.S. EPA Region 8 – Carpenter Snow Creek National Priorities List Superfund Site

FROM: Roger Hoogerheide, Remedial Project Manager
Carpenter Snow Creek NPL Site

D. Henry Elsen, Attorney
Carpenter Snow Creek Site

TO: Eddie A. Sierra, Acting Assistant Regional Administrator
Enforcement, Compliance and Environmental Justice (for signature on MOU)

Martin Hestmark, Assistant Regional Administrator
Ecosystems Protection and Remediation (for signature on MOU)

THROUGH: Joseph Vranka, Superfund Branch Chief (for concurrence below)

Julie DalSoglio, Director – Montana Office (for concurrence below)

Kelcey Land, Director – Technical Enforcement Program – Superfund Branch

Andrea Madigan, Director – Legal Enforcement Program – Superfund Branch
and Acting Director, Legal Enforcement Program

Background

The Carpenter Snow Creek Superfund Site (the Site) is a mining district site near Great Falls, Montana. The U.S. Forest Service owns some of the land within the site boundaries – other land within the boundaries is privately owned or patented mining sites.

The Site is moving into the feasibility study stage. The Forest Service and EPA Region 8 have been developing a Coordination Memorandum of Understanding (MOU) which will govern who

DHE - Enf 4/22/14 RH 4/23/14 4/23/2014 JAD 4/23/14 ENF-RC 4/28/14 concur 4/29/14 ENF-RC acting for Madigan JHEARDS for A.M. ENF-4 4/29/14

EPA and the Forest Service interact as the remedial investigation is concluded and the feasibility studies and Record of Decisions contemplated for the Site are completed. The MOU contains important provisions regarding access, cooperation and cost accounting.

Please concur on this memorandum (Vranka, DalSoglio, Land and Madigan) and sign on the MOU (Sierra and Hestmark). When the last person signs it, please return it to Henry Elsen at 8 MO, Baucus Federal Building, 10 W. 15th Street Suite 3200, Helena, MT 59624 by express mail. Henry can be reached at 406 457-5030 and Roger can be reached at 406 457-5031 with questions.

Attachments

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FS#13 – MU-

MEMORANDUM OF UNDERSTANDING
between
ENVIRONMENTAL PROTECTION AGENCY REGION 8
and
USDA-FOREST SERVICE REGION 2
concerning
THE CARPENTER SNOW CREEK SITE

ENVIRONMENTAL PROTECTION AGENCY
MAY 13 2014
MONTANA OFFICE

I. AUTHORITY AND BACKGROUND

A. The purpose of this Memorandum of Understanding (MOU) is to provide a recommended framework for the United States Environmental Protection Agency (EPA) and the United States Department of Agriculture Forest Service (Forest Service) to coordinate response actions at the Carpenter Snow Creek National Priorities List Site, Cascade County, Montana (also referred to as the Site). EPA and the Forest Service are collectively known as the "Parties."

B. EPA and the Forest Service recognize that, to expeditiously implement the necessary response actions at the Site, they should coordinate their respective authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq. This MOU also provides a process for resolving disputes between EPA and the Forest Service that may arise during the planning and implementation of such response actions. This MOU is not intended to address coordination regarding natural resource damage issues.

C. Under CERCLA, 42 U.S.C. § 9604, the President has authority to respond to releases and threatened releases of pollutants, contaminants, and hazardous substances to protect the public health or welfare or the environment. 42 U.S.C. § 9604. The President's CERCLA authorities have been delegated to the Administrator of the EPA to enable that agency to respond to the release or threat of release of pollutants, contaminants, and hazardous substances on private property and on state or Federally-managed lands. Certain of these authorities have been re-delegated to officials in the EPA Region 8 office.

D. Pursuant to Executive Order 12580, as amended by Executive Order 13016 and other orders, the President delegated authority to conduct various activities under CERCLA, including investigations and response activities (42 U.S.C. § 9604), abatement actions (42 U.S.C. § 9606), cost recovery (42 U.S.C. § 9607), and entering into agreements with potentially responsible parties (PRPs) to perform work (42 U.S.C. § 9622), to the heads of several executive departments and agencies, including the EPA and the United States Department of Agriculture (USDA).

E. The Secretary of Agriculture has re-delegated his authorities under Executive Order 12580 to the Forest Service with respect to land and facilities under Forest Service jurisdiction, custody or control (hereinafter referred to as National Forest System or Forest Service lands). 7 C.F.R. § 2.60(a)(39). The Secretary of Agriculture re-delegated his authority under Executive Order 13016 with respect to Forest Service land and resources to the Chief of the Forest Service and the Director of the USDA Office of Procurement and Property Management, to be exercised with the concurrence of the USDA General Counsel. 7 C.F.R. § 2.93(a)(17)(vii)(68 Fed. Reg. 27431, 27448, May 20, 2003).

F. The Carpenter Snow Creek Site lies in the Little Belt Mountains of the Lewis and Clark National Forest, adjacent to the Town of Neihart, located in southern Cascade County, approximately 55 miles south of Great Falls, Montana. The Site is part of the Neihart Mining District, also known as the Montana District (hereinafter the District), located in the Carpenter and Snow Creek drainages and in several other tributary drainages to Belt Creek, which flows through the Town of Neihart. The Site, encompassing approximately 18,000 acres, is depicted generally at **Attachment A**. The Site has been delineated into three operable units (OUs).

i. OU1 includes the Neihart Community Soils Area, encompassing the urban area of the Town of Neihart, which contains contaminated soils associated with residential and public-use property. OU1 also includes the mine waste adjacent to residential property, waste accessible to the general public, and the Belt Creek (Neihart) Tailings, which were addressed as part of an EPA time critical removal action in 2004.

ii. OU2 is the Snow Creek watershed, which is characterized by ore that has low base metal content and higher gold content. OU2 contains the abandoned mine sites, mill sites, and associated wastes at the base of the Neihart slope that lies adjacent to the Town of Neihart. OU2 also contains the abandoned mines and mills within Lucy Creek, Mackay Creek, Haystack Creek and Burg Creek in the Upper Carpenter Creek basin.

iii. OU 3 contains portions of the Upper Carpenter Creek basin as well as lower Carpenter Creek to the confluence with Belt Creek and any wastes in the Belt Creek floodplain extending to Monarch The Silver Dyke Mining Complex located in the Sih Mem Creek drainage, in the Upper Carpenter Creek basin above the confluence with Snow Creek. The Silver Dyke Mining Complex includes the Silver Dyke glory hole, associated underground workings, mill facilities, tailings piles, and eroded tailings in the floodplain areas of Carpenter Creek. The ore in this complex is characterized by a wide body of low grade ore containing zinc and lead and a high proportion of copper, but also resulted in a large quantity of tailings and refuse. In 1925, a tailings dam next to the Silver Dyke Mill was damaged by an earthquake and resulted in a flood of tailings into the valley below, now known as the Silver Dyke Tailings. In 1926, Silver Dyke Mining Company developed two new impoundments (upper and lower) for collection of mine tailings. These tailings, now known as the Carpenter Creek Tailings, were placed into the impoundments by slurry from the upstream Silver Dyke Mill and are thought to have originally spanned the entire valley.

These OU descriptions are undergoing review as feasibility studies are planned and may be changed.

G. The Carpenter Snow Creek Site was used for mining operations, primarily for silver, lead and zinc from 1881 until the 1940s. Approximately 630,000 cubic yards of waste rock and mill tailings are in the Carpenter Creek watershed. The waste rock and mill tailings cover approximately 68 acres of private and public land in the District. The waste rock and tailings are by-products of mining and milling processes. These uncontained wastes are deposited along the banks of Carpenter Creek, Snow Creek, Belt Creek, and all their tributaries where ore extraction activities took place. Abandoned and inactive mines exist in the Carpenter Creek, Snow Creek and Belt Creek drainages on both public and private land within the Lewis and Clark National Forest. These areas contain hazards including open and collapsed adits, open and collapsed mine shafts, collapsed stopes, partially collapsed structures, steep grades, waste rock dumps, mill tailings, concentrates, adit discharges, as well as discarded chemicals and electrical transformers.

H. The Parties have determined that response actions are needed to reduce or remove the threat to human health, welfare, and the environment at the Site. EPA and the Forest Service plan to address these releases of hazardous substances into the environment through the coordinated exercise of their respective CERCLA authorities.

I. On September 13, 2001, EPA published a final rule in the Federal Register listing the Carpenter Snow Creek Site on EPA's National Priorities List for response to releases or threatened releases of hazardous substances. 66 Fed. Reg. 47,583 (2001).

J. EPA has commenced a Remedial Investigation/Feasibility Study (RI/FS) to determine the nature and extent of contamination at or from the Site. EPA has also established preliminary study area boundaries for OU2 and OU3 for the purpose of planning and developing the initial scope of the RI/FS. As the Site is characterized further, these OU boundaries are subject to change.

K. All response actions covered by this MOU must be conducted in accordance with the National Contingency Plan (NCP), including state assurances, requirements for state consultation pursuant to 40 C.F.R. § 300.435 and Subpart F for remedial actions, and potential future State of Montana responsibility for operation and maintenance.

II. COORDINATION AND COOPERATION

A. EPA and the Forest Service have designated the following persons to be involved in the day to day coordination, communication and decision making regarding the exercise of the agencies' respective authorities at and near the Site:

EPA Remedial Project Manager ("EPA RPM")

Roger Hoogerheide
EPA Montana Office
Federal Building
10 West 15th Street, Suite 3200
Helena, Montana 59626
hoogerheide.roger@epa.gov

Forest Service On-Scene Coordinator ("FS OSC")

Bethany A. Ihle
Lewis and Clark National Forest
Townsend Ranger District
415 S. Front St.
Townsend, MT 59644
bihle@fs.fed.us

If either agency changes its representative, such agency will notify the other agency as soon as practicable.

B. EPA is the lead agency for the RI/FS. The EPA RPM and the FS OSC intend to coordinate with each other to implement response actions at the Site. This coordination includes reasonable prior notice of, and an opportunity to participate in, any scheduled meetings with third parties related to the Site, or any

significant on-Site activities. In most cases, reasonable prior notice should be at least seven days. In the event that a meeting needs to be scheduled on shorter notice, the EPA RPM or FS OSC shall use their best efforts to contact their counterpart and determine the counterpart's availability prior to scheduling the meeting.

C. Subject to Executive Order 12580, § 9(i), when undertaking joint response actions pursuant to this MOU, EPA will be responsible for the costs associated with response actions on or waste removed from private lands, and the Forest Service will be responsible for the costs associated with response actions on or waste removed from Forest Service lands. EPA and the Forest Service intend to apportion costs based upon the volume of mine waste addressed on or removed from private lands and federal lands respectively. Based on preliminary information regarding mine waste volume, the Parties estimate that EPA will be responsible for 80% of response costs and the Forest Service will be responsible for 20% of response costs. Because this allocation is based upon estimated mine waste volume, at the time of the Record of Decision, EPA and the Forest Service understand that the percentage allocation may be adjusted to reflect any new information regarding mine waste volume that is attributable to private land and Forest Service land. EPA and the Forest Service agree to execute a separate interagency agreement to address billing by EPA and repayment of annual expenditures by the Forest Service.

D. No joint waste repository shall be located on-Site in the absence of a separate joint repository agreement between EPA and the Forest Service.

E. EPA and the Forest Service plan to coordinate in order to establish a schedule of activities for the Site for planning purposes. The schedule is expected to be updated periodically, but no less than annually, to reflect actual progress on work at the Site and current projections.

F. EPA and the Forest Service intend to supply to each other copies of all significant documents related to Site work. Such documents include project proposals, sampling and analysis plans, investigation plans, and work plans. Also, the EPA RPM and FS OSC plan to provide each other with copies of documents needed to fulfill the purposes of this MOU. The EPA RPM and the FS OSC intend to cooperatively determine which documents related to the Site are to be copied and provided to the other agency, either directly by the agencies or by third parties. Where EPA or the Forest Service needs to obtain comments of another party on a document, the EPA RPM and FS OSC intend to cooperatively determine how and when those comments will be provided.

G. The EPA RPM and the FS OSC intend to communicate regularly to review work status and resolve any existing or anticipated technical issues, and coordinate on major decision points, as follows:

i. The scope of work to be performed and estimated costs;

ii. Project management procedures and contracts;

iii. Project design and constructions specifications;

iv. The establishment of a joint mine waste repository, if appropriate;

v. Community and landowner relations activities;

vi. Certification of completions issued for response actions at the Site;

vii. Long term operation and maintenance/post removal site control; and

viii. Future response actions in the event of a repository failure.

H. The FS OSC plans to advise the EPA RPM regarding any issues and concerns of special interest to the Forest Service. The FS OSC plans to assist the EPA RPM in identifying and communicating with Forest Service personnel who can provide information concerning the Site as needed.

I. Legal counsel for EPA and the Forest Service intend to coordinate on legal issues, including investigation of and enforcement actions against any PRPs for the Site.

J. The Forest Service consents to EPA, the Montana Department of Environmental Quality, and their authorized representatives entering and having access to Forest Service land within the Site for the purposes of conducting response actions. To the extent practicable, EPA intends to provide advance notice to the Forest Service of at least seven days before entering Forest Service Site property.

III. DISPUTE RESOLUTION

A. Consultation between the EPA RPM and the FS OSC will likely resolve the vast majority, if not all, technical issues between EPA and the Forest Service.

B. If the EPA RPM and the FS OSC do not reach agreement on a disputed item arising from activities at the Site, it is expected that the issue will be elevated to the appropriate senior management at the Forest Service and EPA for further discussion and resolution.

IV. LIMITATIONS AND DURATION OF AGREEMENT

A. The Forest Service and EPA reserve their rights and authorities under CERCLA, as well as other laws, the NCP, and applicable Executive Orders. No provision of this MOU in any way limits those rights and authorities.

B. Nothing is this MOU shall be considered as obligating EPA or the Forest Service to expend, or as involving the United States, in any contract or other obligation for the future payment of money. The Parties recognize that each must operate within the requirements of the federal budget process and legal restrictions concerning obligations of funds. No provision of this MOU shall be construed to require the Parties to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

C. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the Parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including those for Government procurement. Such endeavors will be outlined in separate written agreements and must be independently authorized by appropriate statutory authority.

D. This MOU is not intended to and does not create any right, benefit or trust obligation, substantive or procedural, enforceable in law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

E. Nothing in this MOU restricts the Forest Service or EPA from participating in similar activities with other public or private agencies, organizations, or individuals.

F. Any information furnished to the Forest Service or EPA under this instrument is subject to the Freedom of Information Act (5 U.S.C. § 552).

G. This MOU takes effect upon the signature of the Forest Service and EPA, and will expire on November 1, 2018 unless renewed by agreement of the parties. This MOU may be amended upon written request of either the Forest Service or EPA and the subsequent written concurrence of the other. Either the Forest Service or EPA may terminate this MOU at any time with thirty days' written notice.

H. This MOU may be executed in counterparts by each of the signatories. Each of the counterpart documents shall be deemed an original, but together shall constitute one instrument.

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 8

By: Eddie A. Sierra Date: 05/02/2014
Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

By: _____ Date: 5/5/14
Martin Hestmark
Assistant Regional Administrator
Office of Ecosystem Protection and
Remediation

FOREST SERVICE

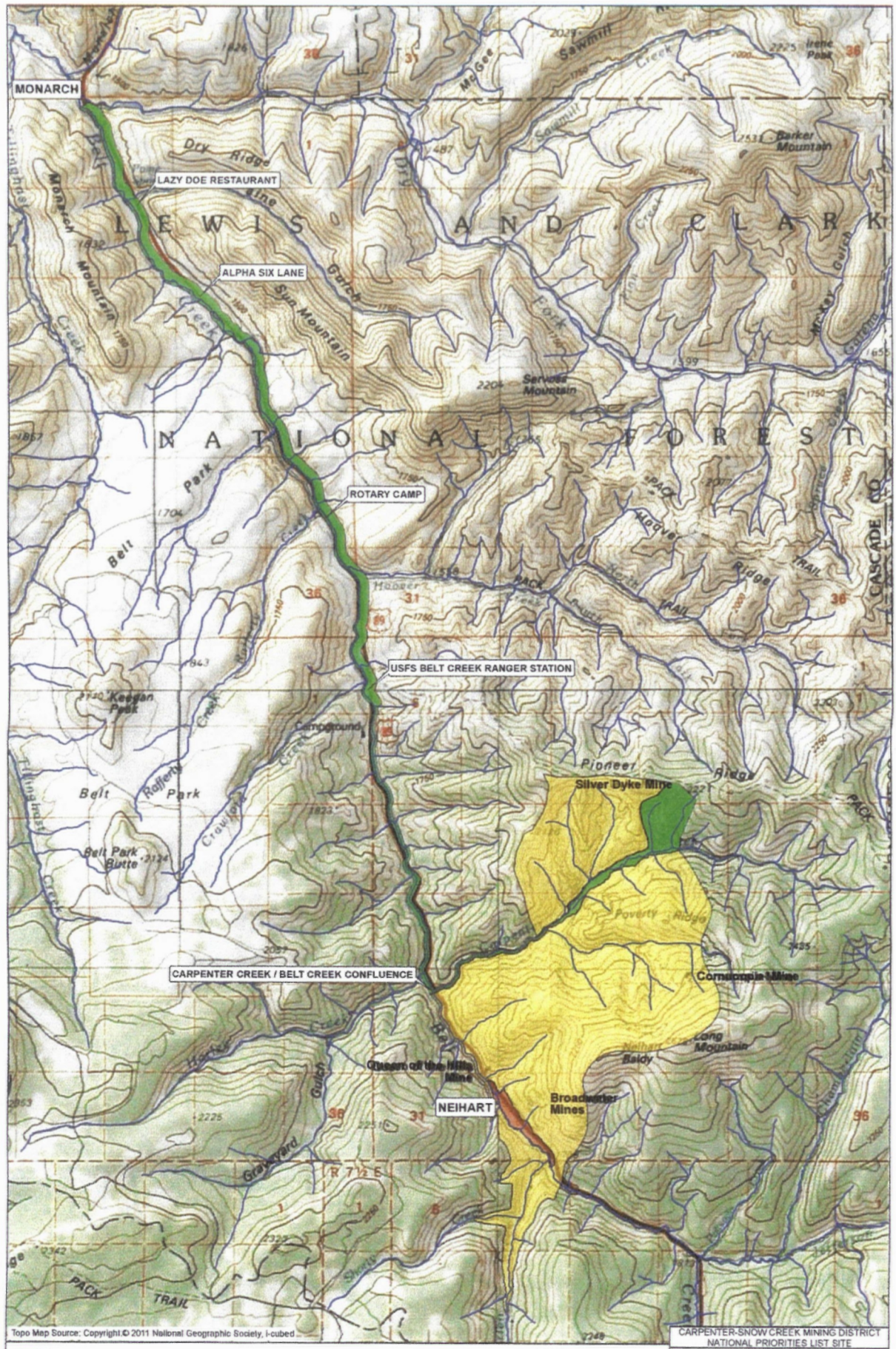
By: _____ Date: _____
FAYE L. KRUEGER,
Regional Forester

The authority and format of this
instrument has been reviewed and
approved for signature.

_____ Date: _____
Elaine Hilliard Forest Service Grants
and Agreements Coordinator

Attachment A – Site Map

Attachment A – Site Map



Topo Map Source: Copyright © 2011 National Geographic Society, i-cubed

LEGEND

- STREAM
- OU1
- OU2
- OU3

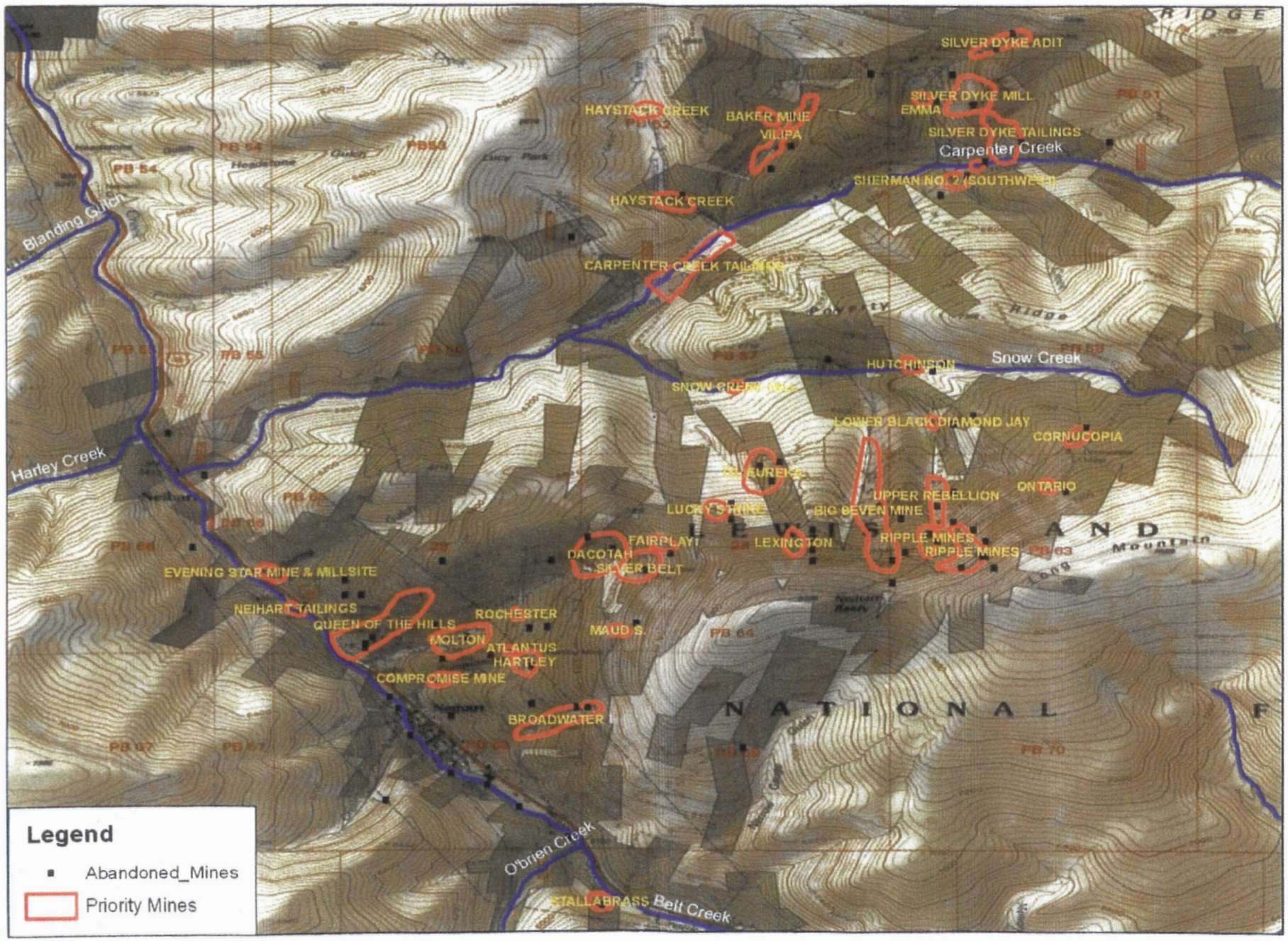
0 0.5 1 1.5 2 Miles

CARPENTER-SNOW CREEK MINING DISTRICT
NATIONAL PRIORITIES LIST SITE

FIGURE 1.0-1
SITE LOCATION MAP

TETRA TECH

GIS MAP BY DOUG HEROLD TTEMI-HELENA - Figure_1.0-1_Site_Location_Map_012814.mxd


SILVER DYKE ADIT
SILVER DYKE MILL
EMMA
SILVER DYKE TAILINGS
Carpenter Creek
HAYSTACK CREEK
BAKER MINE
VILIPA
HAYSTACK CREEK
CARPENTER CREEK TAILINGS
Blanding Gulch
Harley Creek
Snow Creek
HUTCHINSON
LOWER BLACK DIAMOND JAY
CORNUCOPIA
ONTARIO
UPPER REBELLION
BIG SEVEN MINE
LUCKY STRIKE
FAIRPLAY
LEXINGTON
RIPPLE MINES
DACOTAH
SILVER BELT
EVENING STAR MINE & MILLSITE
NEIHART TAILINGS
QUEEN OF THE HILLS
ROCHESTER
MOLTON
ATLANTUS
HARTLEY
MAUD S.
COMPROMISE MINE
BROADWATER
O'brien Creek
STALLABRASS
Belt Creek
Legend
Abandoned_Mines
Priority Mines