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## **DEPARTMENT OF AGRICULTURE**

### **Natural Resources Conservation Service**

#### **The Secretary of Agriculture's Determination of the Primary Purpose of the Nevada Petroleum Claims Fund for the Cleanup of Petroleum Discharge from Storage**

**[Docket ID: NRCS-2019-0021]**

**AGENCY:** Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA).

**ACTION:** Notice of Determination.

**SUMMARY:** NRCS is providing public notice that the Secretary of Agriculture has determined that cost share payments made by the Nevada Division of Environmental Protection (NDEP) are primarily for the purpose of conserving soil and water resources or protecting and restoring the environment. NRCS was assigned technical and administrative responsibility for reviewing NDEP's Petroleum Claims Fund program and for making appropriate recommendations for the Secretary's determination of primary purpose. The Secretary made the determination for the State of Nevada's Petroleum Claims Fund program administered by the Nevada Division of Environmental Protection.

**FOR FURTHER INFORMATION CONTACT:** Greg Lovato, Division Administrator, Nevada Petroleum Claims Fund, 901 S. Stewart Street, Carson City, Nevada 89701 or Maggie Rhodes, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW, Room 5237 South Building, Washington, DC 20250.

**SUPPLEMENTAL INFORMATION:** Under Section 126(a) (8) of the Internal Revenue

Code, gross income does not include the “excludable portion” of payments received under any program of a State, or a political subdivision of a State, under which payments are made to individuals primarily for the purpose of protecting or restoring the environment. In general, a cost share payment for selected conservation practices is exempt from Federal taxation if it meets three tests: (1) it was for a capital expense, (2) it does not substantially increase the operator’s annual income from the property for which it is made, and (3) the Secretary of Agriculture certified that the payment was made primarily for conserving soil and water resources, protecting or restoring the environment, improving forests, or providing habitat for wildlife.

The Secretary of Agriculture evaluates a conservation program on the basis of criteria set forth in 7 CFR part 14 and makes a “primary purpose” determination for the payments made under the program. The objective of the determination made under part 14 is to provide maximum conservation, environmental, forestry improvement, and wildlife benefits to the general public from the operation of applicable programs. Final determinations are made based on program, category of practices, or individual practices. Following a primary purpose determination by the Secretary of Agriculture, the Secretary of the Treasury determines if the payments made under the conservation program substantially increases the annual income derived from the property benefited by the payments.

From this Federal action, approving tax deferral will not result in impacts to the environment, therefore, no further National Environmental Policy Act (NEPA) documentation will be prepared.

**Determination:** As provided for by Section 126 of the Internal Revenue Code, the Secretary examined the authorizing legislation, regulations, and operating procedures

regarding the NDEP's Nevada Petroleum Claims Fund program. In accordance with the criteria set out in 7 CFR part 14, the Secretary has determined the primary purpose of cost share payments made under Nevada Petroleum Claims Fund program is conserving soil and water resources or protecting and restoring the environment.

The State of Nevada Petroleum Fund was initially implemented in 1989 by State legislation to assist owners and operators of regulated underground storage tanks in meeting the Federal requirements for financial responsibility, pursuant to the Code of Federal Regulations (CFR) 40 CFR 280.90 through 280.99. The Fund also allows voluntary enrollment of eligible non-regulated petroleum storage tanks and covers the cost of cleanup associated with releases from residential heating oil tanks.

A primary objective when the Nevada legislature authorized the Fund is the protection of the State's environment, specifically the supplies of water. The Nevada legislature made these findings part of the statutory authorization in NRS 445C.290 and charged the Nevada Board to Review Claims (Board) with assisting in the prompt cleanup of any discharge of petroleum from a storage tank located in Nevada.

A "Record of Decision" for the Nevada Petroleum Fund Board to review claims regarding reimbursement for cleanup of petroleum storage tank discharges has been prepared and is available upon request from Maggie Rhodes, Director, Financial Assistance Programs Division, NRCS, 1400 Independence Avenue, SW, Room 5237 South Building, Washington, DC 20250.

This determination is in accordance with Section 126 of the Internal Revenue Code of 1954, as amended (26 U.S.C. § 126), and permits recipients of cost share payments to exclude such payments from gross income to the extent allowed by the Internal Revenue Service.

**Matthew Lohr,**  
*Chief,*

*Natural Resources Conservation Service.*

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