RECORD OF DECISION

NEVADA DEPARTMENT OF ENVIRONMENTAL PROTECTION ADMINISTRATION OF THE NEVADA PETROLEUM CLAIMS FUND WHICH PROVIDES FINANCIAL ASSISTANCE FOR THE CLEANUP OF PETROLEUM DISCHARGE FROM STORAGE TANKS

DETERMINATION OF PRIMARY PURPOSE FOR
FEDERAL TAX PURPOSES

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

The Secretary of Agriculture's Determination of the Primary Purpose of the Nevada Petroleum Claims Fund financial assistance for cleanup of petroleum discharge from storage tanks

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture

ACTION: Record of Decision

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

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

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.

SUPPLEMENTARY 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 protecting or restoring the environment. In general, a cost share payment for selected conservation practices is exempt from Federal taxation if it meets the following 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 based on 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 determinations 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 on the basis of 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.

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 and protecting and restoring the environment.