



National Association of Wetland Managers and
Saint Mary's University GeoSpatial Services



Saint Mary's
University
GEOSPATIAL SERVICES

Tribal Clean Water Act Training Module #3

Introduction to Treatment as a State (TAS) for Clean Water Act Programs

Welcome!

If you have any technical difficulties during your online training experience, please send your question to Portia Osborne at portia@nawm.org or call (207) 892-3399.



Online Training Modules

Welcome

Introduction to Online Course and Optional Quiz

(7 knowledge questions)

Trainer Introduction

Training Presentation

(2 sections)

How to Access the Online Quiz and Receive a Certificate of Completion

(For use in obtaining CEUs)



Tribal Clean Water Act Training Module #3

Introduction to Treatment as a State (TAS) under the Clean Water Act

Target Audience:

Tribal water quality and aquatic resources staff who want to learn more about the potential to have “treatment as a state (TAS)” authority to administer federal Clean Water Act (CWA) programs.

Learning Objectives:

By taking part in this online training, participants should be able to:

1. Understand the cooperative federalism approach that underlies the CWA.
2. Know which CWA programs can be administered by Tribes with TAS.
3. Become familiar with basic requirements for getting TAS.
4. Understand additional requirements to getting TAS for specific programs.
5. Be able to discuss considerations for when your Tribe is deciding whether to seek TAS.



What is on the Quiz?

Seven questions related to key takeaways from the online training presentation.

This module will provide information on how to access the quiz after the presentation is complete (2 sections).

On average, the quiz takes less than 15 minutes to complete.



Trainer Introduction



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Overview of the Federal Clean Water Act (CWA)

CWA primary goal: restore and maintain the chemical, physical, and biological integrity of the nation's waters.

CWA establishes several programs to help achieve water quality goals, such as:

- Section 303 water quality standards, describing water quality for specific waterbodies that is consistent with a water's designated use;
- Permit programs authorizing discharge to jurisdictional waters, including Section 402 "National Pollutant Discharge Elimination System" (NPDES) permit program for pollutant discharges and section 404's permitting program for discharges of dredged or fill material; and
- Section 106 and section 319 grants to Tribes, states, and others administering water quality programs.

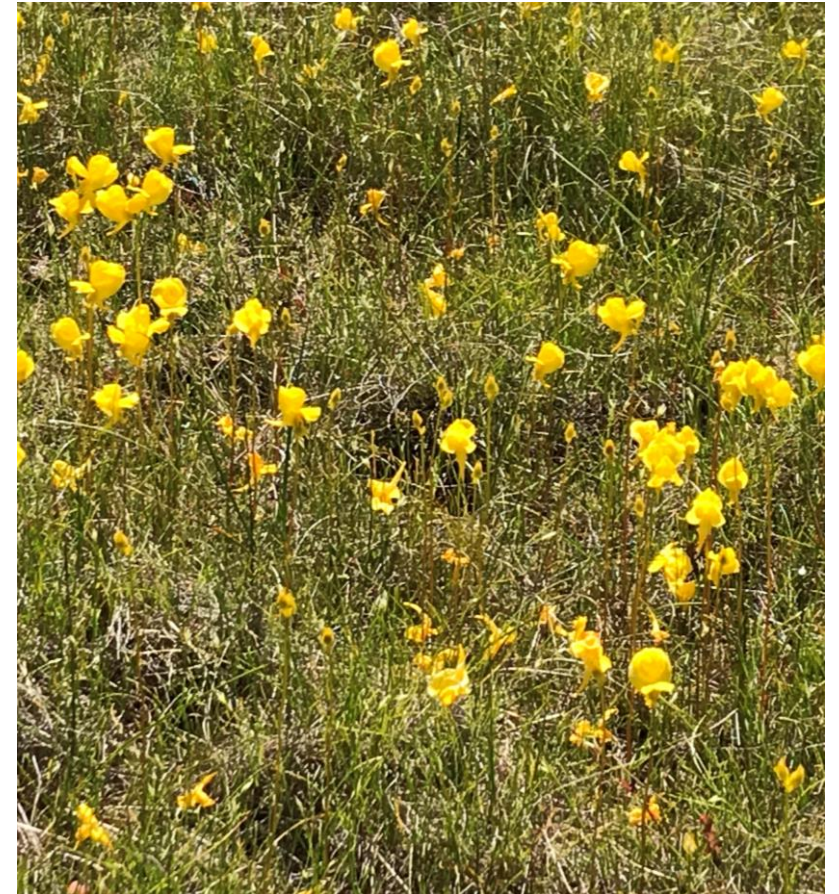
CWA uses a "cooperative federalism" approach to achieve this goal, whereby federal, tribal, and state agencies each have coordinated responsibilities and actions to protect and improve water quality.



Treatment in a Manner as a State (TAS)

CWA §518(3) authorizes the Environmental Protection Agency (EPA) to treat eligible federally recognized Tribes in a manner similar to a state (TAS) for managing certain CWA environmental programs.

Tribes that successfully apply to receive TAS play essentially the same role in Indian country that states do within state lands.



CWA Programs Tribes with TAS May Implement

- Tribes may receive TAS for the principal CWA regulatory programs and grant programs:
 - Section 303(c) program for water quality standards;
 - Section 303(d) water quality restoration provisions, including “Total Maximum Daily Loads” (TMDLs);
 - Section 401 water quality certification program for federal licenses and permits;
 - Section 402 “National Pollutant Discharge Elimination System” (NPDES) permit program for pollutant discharges;
 - Section 404 permitting program for discharges of dredged or fill material; and
 - Sections 106 and 319 grants.
- Generally, receipt of TAS for a CWA program does not guarantee receipt of federal funds sufficient to operate the tribal program.



Basic Processes for Getting TAS

A Tribe must apply to receive TAS for a specific CWA program, and requirements for TAS vary in the details among different programs.

However, all CWA programs have the same basic requirements. To apply for TAS, a Tribe must:

1. Be federally recognized;
2. Have a governing body carrying out substantial governmental duties and powers;
3. Have authority to manage and protect water resources within the borders of an Indian reservation; and
4. Are or will be capable of carrying out the functions of the program.

A tribe applies for TAS for a particular program; at present there is no single process for receiving TAS for all CWA programs.



TAS for Section 303(c) Water Quality Standards

- Water quality standards provide the regulatory and scientific foundation for protecting water quality under the CWA.
- Under CWA §303(c), EPA can authorize eligible Tribes to set their own water quality standards that, once approved by EPA, define tribal water quality goals and serve as a basis for limits on pollutant discharges into waters on reservation lands.
- To receive TAS for water quality standards, a Tribe must apply to EPA and show that they meet the basic requirements for TAS as discussed in Slide 10 above.
 - Before approving an application, EPA will provide notice to adjacent states, tribes, and local stakeholders and an opportunity for comment on the Tribe's assertion of authority.
- Once authorized for TAS under §303(c), a Tribe can seek federal approval of its water quality standards.
 - This requires that a Tribe comply with EPA's implementing regulations at 40 CFR part 131 by developing all elements of its water quality standards, holding a public hearing on those standards, adopting final standards under tribal law, and submitting them for EPA review. Upon EPA approval, the tribe's WQS will be effective for CWA purposes.
- Currently, 84 Tribes have received TAS to administer a water quality standards program, and of those 47 Tribes to date have adopted standards and submitted them to EPA for review and approval.



Examples: TAS for Water Quality Standards

- Pueblo of Isleta standards protecting ceremonial practices.
- The Fond du Lac Band of Lake Superior Chippewa standards including narrative standards for wetlands.
- The Confederated Salish and Kootenai Tribes (CSKT) standards helping reduce pollution from diffuse nonpoint sources.
- The Seminole Tribe of Florida's standards addressing nutrient loadings from agriculture.
- The Sokaogon Chippewa Community standards helping prevent off-reservation resource extraction producing mining wastewater discharges.



TAS for Administering Section 303(d) Impaired Water Quality Restoration Provisions

CWA §303(d) establishes a process by which impaired waters are identified, and Total Maximum Daily Loads (TMDLs) developed to serve as plans for attaining and maintaining applicable water quality standards.

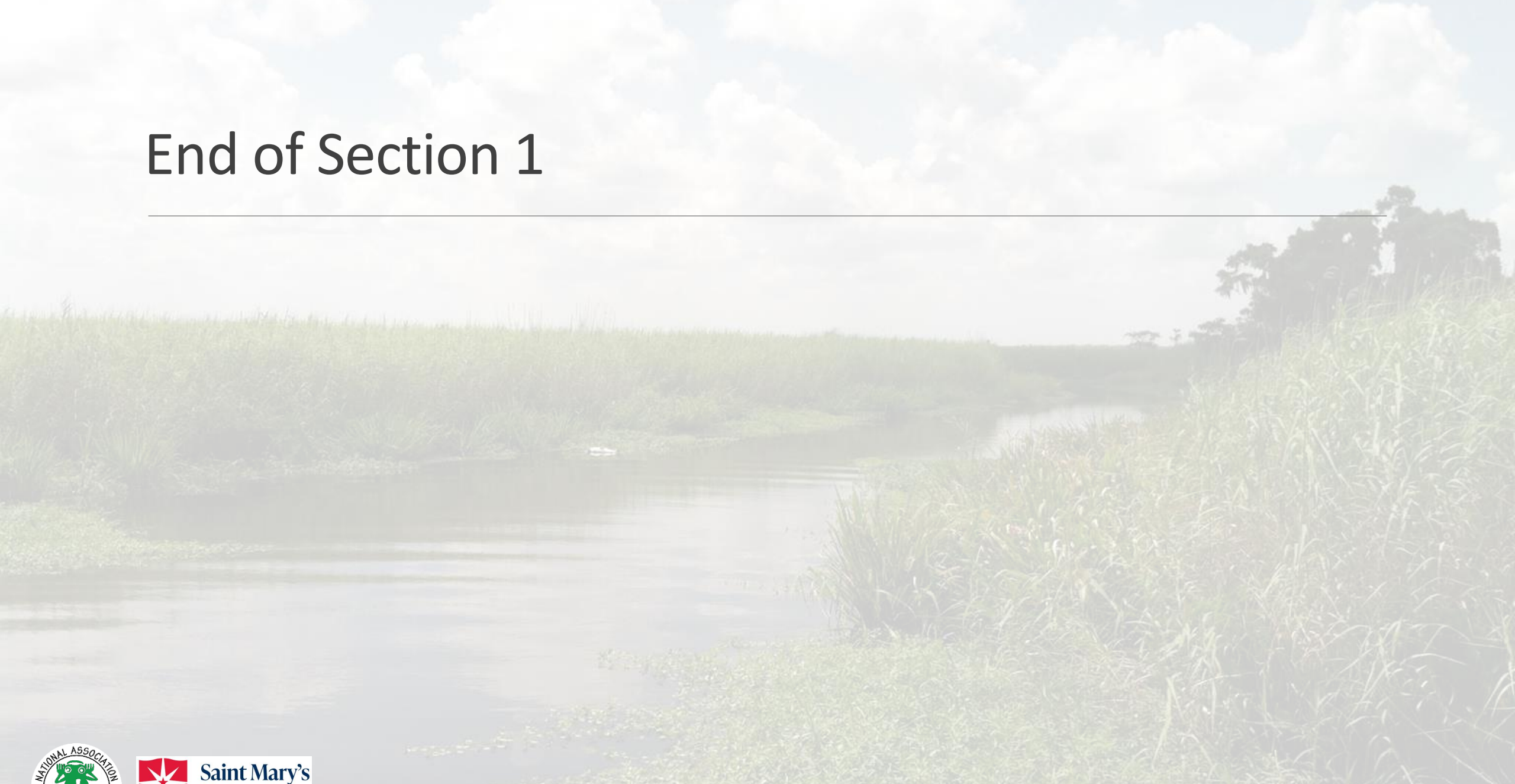
Tribes may seek TAS authority to administer the §303(d) program.

- A Tribe with TAS under another program need only submit required information not previously submitted under an earlier application.

Tribes are not required to have TAS for §303 water quality standards before applying for TAS for §303(d), although impaired waters lists and TMDLs are based on applicable water quality standards.



End of Section 1



Section 2



TAS for the Section 401 Water Quality Certification Program

- CWA §401(a)(1) provides that no federal permit or license can be issued that may result in a discharge to waters of the U.S., unless state or Tribe with TAS certifies the license or permit would be consistent with water quality requirements or waives its authority. Section 401(a)(2) authorizes neighboring states and Tribes with TAS to have input in permits or licenses affecting tribal or state waters.
- To receive TAS for, a Tribe must apply to EPA and show that they meet the basic requirements for TAS as discussed in Slide 10 above.
- A Tribe may seek TAS for all of §401 including the certification authority, or TAS only as a neighboring jurisdiction under §401(a)(2).



Example: TAS for Section 401 Water Quality Certification

- The Fond du Lac Band of Lake Superior Chippewa used its TAS for §401 certification to ensure Corps of Engineers section 404 permits for a taconite mine would be consistent with tribal water quality standards and goals.



TAS for the Section 402 National Pollutant Discharge Elimination System (NPDES) Program

- CWA §402 NPDES permit program addresses water pollution by regulating discharges of pollutants to waters of the United States from “point sources” such as a pipe or other discrete conveyance.
- CWA §402(b) and 40 C.F.R. Part 123 establish a process under which states, Tribes, and territories may apply to administer the NPDES program in lieu of the federal government.
- To apply for TAS under §402, a Tribe must submit:
 - A letter from the tribal leader requesting review and approval;
 - A Memorandum of Agreement;
 - A program description;
 - A statement of legal authority; and
 - The underlying tribal laws and regulations.
- EPA will follow a public notice and comment process when reviewing a TAS application.
- At present, no Tribe has TAS for the §402 program.



TAS for the Section 404 Permitting Program for Dredged or Fill Material

- CWA §404(g) authorizes states and tribes to implement §404 permits in certain waters.
 - An assumed program must be consistent with and no less stringent than CWA requirements and related regulations.
- To receive TAS for § 404, a Tribe must develop a program that includes all elements of the §404 program, such as:
 - Regulating all discharges into all assumed waters within the Tribe's jurisdiction;
 - Regulating the same scope of activities as the federal §404 program;
 - Results in permits consistent with the CWA §404(b)(1) environmental guidelines;
 - Includes compliance and enforcement authorities; and
 - Includes coordination procedures with federal agencies, adjacent states and Tribes.
- At present, no Tribe has received TAS for §404.
- Important note: In August 2023, EPA proposed revised assumption regulations that affect TAS, which may result in changes to these requirements. As of March 2024, EPA had not yet finalized this regulation.



TAS for the Section 106 Grants

- CWA §106 provides financial assistance to establish and administer water pollution control programs.
- Federally recognized Tribes are eligible for §106 funding if they meet the basic requirements for TAS described on Slide 10 and submit an application to EPA.
- Tribes interested in developing programs to address water pollution using §106 funding should contact their EPA regional office for information on how to apply for TAS.
- At present, 285 Tribes have received TAS authorization for §106 grants.
- EPA's 2023 "Clean Water Act Section 106 Tribal Guidance" provides detailed information for potential tribal use of §106 funds.



Example Uses of CWA Section 106 Grants

- Tribes who have received TAS for §106 have used grant funds for projects such as:
 - Developing and implementing comprehensive water quality monitoring programs;
 - Developing and implementing water quality ordinances;
 - Developing and implementing tribal and EPA-approved water quality standards;
 - Developing water quality and geographic information system databases;
 - Conducting training and educational outreach to tribal members;
 - Hiring program staff and purchasing equipment and supplies; and
 - Implementing wetlands protection programs.



TAS for the Section 319 Nonpoint Source Grants

- CWA §319 authorizes grants to address water quality problems stemming from diffuse “nonpoint” sources of pollution.
- Tribes may receive TAS and §319 funding where they:
 - Meet the basic requirements for TAS listed on slide 10;
 - Develop an approved nonpoint source assessment report in accordance with CWA §319(a); and
 - Develop an approved nonpoint source management program in accordance with §319(b).
- Tribes interested in developing nonpoint source pollution management programs using §319 funds should contact their EPA regional office for information on how to apply for TAS.
- At present, 211 Tribes have received TAS authorization for §319 grants.

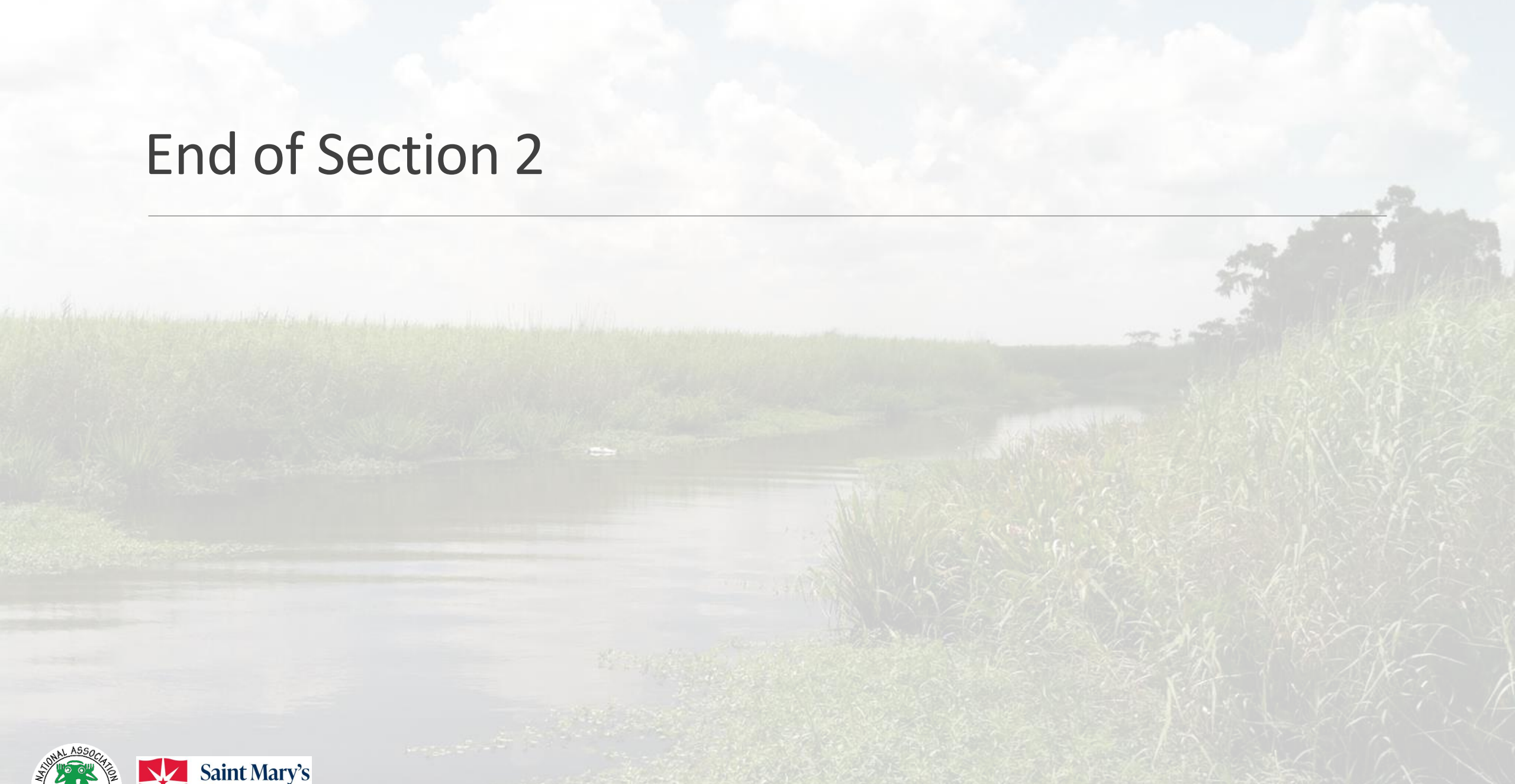


Example: CWA Section 319 Grants

- The Pueblo of Santa Clara used §319 funds to address water quality impacts from a fire that destroyed 65 percent of its watershed.
- The Upper Skagit Indian Tribe used §319 funds to add 100 thousand native plants in riparian areas and add woody debris to help connect an important creek with its surrounding ecosystem.



End of Section 2



Optional Online Quiz

Thank you!

Thank you for listening to this online training from the National Association of Wetland Managers and Saint Mary's University of Minnesota. We hope you found the presentation interesting and informative.

Optional Online Quiz

We invite you to take an optional online quiz for this training module. To take the quiz, you will need to return to the NAWM online training page on the NAWM.org website and select the link to the quiz for this module.

To Receive Your Certificate of Completion

In order to receive a Certificate of Completion to submit to an accrediting organization for continuing education credits or units (CEUs):

- You must complete the quiz; and
- You must receive a score of 80% or higher.

You will have the opportunity to retake the quiz one additional time if you do not pass.



Certificates of Completion

Certificates of Completion are available to you when you successfully complete the training module. Participants who both view the module presentation and complete the module quiz are eligible for a NAWM Certificate of Completion for 1 hour of training.

You will need to create a unique username and password in *ClassMarker* for each certificate. After completing the module quiz, you will be prompted to download your certificate.

You are responsible for sending the NAWM certificate to your accrediting organization.

Certificates are **free** for NAWM members and for tribal members and staff.

- For tribal members or tribal staff who are not a member of NAWM: if you are interested in taking the module quiz to earn a certificate, please contact Laura Burchill at the NAWM office at laura@nawm.org or (207) 892-3399.
- For non-members: there is a \$25 administrative fee per certificate that must be paid before you can access the quiz.

For complete details, please return to the NAWM online training modules webpage.

