

# SECTION 319 GRANT ELIGIBILITY ISSUES

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## STATUTORY OVERVIEW

- CWA Section 319 requires states to prepare assessment reports and management programs. It also includes a grant program to assist in implementing the approved management program.
- CWA Section 518 says that Tribes may be treated in the same manner as a state for purposes of Section 319 if they meet certain conditions.

## GRANT ELIGIBILITY

- THEREFORE, to be eligible for a Section 319(h) grant, a Tribe will need ALL of the following:
  1. Approved Assessment Report (Section 319 (a))
  2. Approved Management Program (Section 319(b)); AND
  3. Approved application for “treatment in the same manner as a state.” (Section 518 and 40 CFR 35.633).

## TAS APPLICATION

- Federal Recognition (e.g. Federal Register Notice).
- Governing body carrying out substantial governmental duties and powers. This could include:
  - Description of form of tribal government.
  - Description of governmental functions currently performed.
  - Source of governmental authority, such as tribal constitution, by-laws etc.
- Function to be exercised by Tribe pertain to the management and protection of water resources” held by the Tribe or “otherwise within the borders of an Indian reservation.” (See slide 5)
- The Tribe is reasonably expected to be capable of carrying out the program. (See slide 6)

## Pertaining to Water Resources

- Must show that activities pertain to waters “otherwise within the borders of an Indian reservation.”
- Describe Reservation and Reservation waters.
- Provide Maps.
- “Reservation” includes all land within the exterior boundaries. In addition, trust land not within traditional exterior boundaries would be considered a de facto “reservation. Therefore, Tribes which do not have a reservation with established boundaries can seek TAS for trust lands.

## CAPABILITY

- Description of previous management experience;
- Description of existing environmental programs being carried out;
- Description of the organization which will be carrying out the program;
- Description of technical and administrative capabilities of staff which will carry out program.

## MANAGEMENT PROGRAM ISSUES

- Tribe must have authority to carry out the activities proposed in the management plan. Section 319 is not a “delegation” of authority. A Tribe must have sufficient authority to implement each element of the management program.
- Management program must include a certification from the tribal attorney that the Tribe has adequate authority to implement the management program.

## MANAGEMENT PLAN ISSUES Public Involvement/Public Comment

- Management Program is submitted to EPA “after notice and opportunity for public comment.” Section 319(b)(1). The Tribe’s submittal should demonstrate compliance with this requirement and also include a response to comments.