

January 6, 2014

CERTIFIED MAIL and *ELECTRONIC VERSION*

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Tom Vilsack, USDA Secretary
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250
Email:

Subject: USDA Civil Rights Compliance Review Report

Dear Ms. Gillette and Secretary Vilsack:

The purpose of this letter is to bring to your attention the attached report produced by the USDA Office of Compliance, Policy, Training and Cultural Transformation, entitled: *FOREST SERVICE COMPLIANCE REVIEW REPORT CIVIL RIGHTS PROGRAM REVIEW Conducted At: Regions Two and Three April 1- June 14, 2013 Onsite: April 15-19 Colorado and New Mexico Report Date: June 2013*. The Office of the Assistant Secretary for Civil Rights (OASCR), Office of Compliance, Policy, Training and Cultural Transformation (OCPTCT), Compliance Division (CD) conducted a CR Program Compliance Review of the Forest Service (FS) grazing and recreational programs. The Report was approved by the office Director and provided to us by the Office of the Assistant Secretary for Civil Rights.

The Report's Executive Summary concludes at page 4 regarding the performance of the Forest Service (FS) agency as follows: *"This review found that both Regions Two and Three were non-compliant with several CR requirements; inconsistent implementation of USDA/FS regulations, procedures and other mandates."* The Report identifies several program areas of noncompliance which includes at page 5, the process used in *"Terminating or suspending grazing permits."*

The Report's Introduction, Purpose and Scope of Review identify the FS program areas of required compliance reviewed in the context of Federal laws and overall FS agency regulations. The Scope also identified the specific review of the FS agency's policies with regard to minorities at page 6, 2nd paragraph: *"The following were included in a review of the Agency's grazing land management and recreational accessibility policies for Hispanic and Native American (American Indians)"*. The issue of access to grazing permits is of vital importance to the minority Hispanic and Native American ranchers in Colorado and New Mexico and has long been a source of conflict with the FS over complaints of discriminatory practices. See *David Sanchez v. Forest Service, No. FS-12-5775* and *Jarita Mesa Livestock Grazing Association, Alamosa Livestock Grazing Association, et. al. vs. The United States Forest Service, et al., USDC District NM, No. CIV 12-0069 JB/KBM*.

The review compliance process identified in this Report interviewed several FS District office staff/employees in Regions Two and Three. Also interviewed as program participants were *"Grazing Permittees"* from the various National Forests and Ranger Districts in Regions Two and Three. The

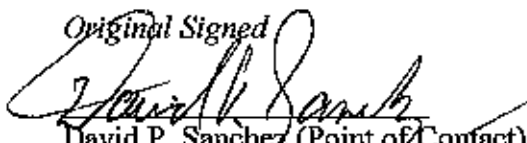
Report's Conclusion notes evidence of discrimination on page 18; 1st paragraph, 2nd sentence: "*Many of the program participants raised concerns of discriminatory treatment toward minority participants, resulting in many of them having their grazing permits either terminated or suspended*". Thus, it is clear that the impetus for the review compliance process by the OCPTCT came from the minority grazing permittees themselves and not the non-minority group permittees.

The OCPTCT office Report details 36 Findings and lists the attendant corrective actions which support the merit of our long-standing complaints that discrimination against minorities was and is systemic in the entire FS agency in Regions Two and Three. The FS agency noncompliance with Federal laws and its own overall agency regulations has had a long-standing negative impact on the social, economic and cultural status of Hispanic and Native American ranching participants referred to in this report. It is important for the White House Administration and USDA to recognize that there are Native American and Hispanic families living at or below poverty level guidelines throughout New Mexico and Colorado. It is equally important to recognize that the minorities referenced in this report are dependent on the Federal lands that makeup approximately seventy percent of the land mass of our counties. For example, Region Three alone "*covers 1.8 million acres*". The dependency and use of this Forest Lands and its natural resources by Native Americans and Hispanics predates the establishment of the US Forest Service in 1905 by several centuries, going back to the founding of the livestock industry in 1598 by early Spanish colonists. This area has also been recognized by Congress as the "Northern Rio Grande Heritage Area" for the presence and contributions of its many native communities. Yet the long discriminatory practices of the US Forest Service against these native ranchers has sharply reduced and crippled their livestock economy and their very existence as land based peoples.

In conclusion, the Report by the OCPTCT office identifies the root causes for the FS Agency's inability to comply with Federal Laws and overall agency regulations. The FS Agency's failure to comply with Federal law and regulations has led to numerous confrontations between the agency and the minority participants identified in the Report. This long history of the FS Agency decisions to terminate, suspend and reduce the participants' grazing permits has devastated the social and economic sustainability of Hispanic and Native American families in the state of New Mexico and Colorado. The cumulative impact of these adverse FS decisions extends to our School Districts, Counties and State. As stated above, the *David Sanchez v. Forest Service, No. FS-12-5775* and *Jarita Mesa Livestock Grazing Association, et al. v. USFS, USDC District NM, No. CIV 12-0069 JB/KBM* prompted this civil rights compliance review of the various FS agency's identified in the Report. We feel that the numerous findings by the OCPTCT office are thorough and justified. However, we are concerned that the Report will not have the proper corrective action to eliminate discrimination in the US Forest Service, Regions 2 and 3, unless a directive to that effect from your offices to the appropriate USDA offices is forthcoming. At this point we also find it necessary to request from USDA the documents and overall evidence that supports the findings and executive summary decision in the Report collected by the OCPTCT Staff, via a separate FOIA request to follow. We also request to be included directly in the overall corrective action process with USDA.

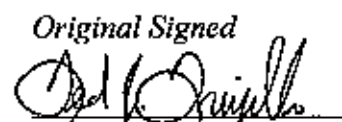
Sincerely,

Original Signed


David P. Sanchez (Point of Contact)
Board of Directors
Northern New Mexico Stockman's Association

Sincerely,

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FOREST SERVICE

**COMPLIANCE REVIEW REPORT
CIVIL RIGHTS PROGRAM REVIEW**

Conducted At:

**Regions Two and Three
April 1- June 14, 2013
Onsite: April 15-19, Colorado and New Mexico**

Conducted By:

**Office of Compliance, Policy, Training and Cultural
Transformation**

**Report Date:
June 2013**

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USDA United States Department of Agriculture
Office of the Assistant Secretary for Civil Rights



Dates of Review:

April 1- June 14, 2013
April 15 - 19, 2013, Colorado and New Mexico

Review Conducted By:

Office of the Assistant Secretary for Civil Rights (OASCR)
Office of Compliance, Policy, Training and Cultural
Transformation (OCPTCT), Compliance Division

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Approved:

Ronald Branch

Date:

6/24/13

Ronald D. Branch, Acting Director, Office of Compliance, Policy, Training and
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EXECUTIVE SUMMARY

During the period April 1 through June 14, 2013, the U.S. Department of Agriculture's (USDA) Office of Compliance, Policy, Training and Cultural Transformation (OCPTCT), conducted a Civil Rights (CR) Compliance Review of the Forest Service (FS) Region Two in Colorado and Region Three in New Mexico.

The Review Team (Team) evaluated the following aspects of the CR program of FS Regions Two and Three:

- The technical assistance and training provided to program participants to determine compliance with applicable CR laws and regulations;
- The public notification and outreach program;
- The system for collection and analysis of data necessary to determine compliance with Title VI of the Civil Rights Act of 1964;¹
- Trends and patterns of participation in the Grasslands Program and Recreation Program at the San Juan, Carson, and Cibola National Forests;
- The accommodations and facilities accessibility for persons with disabilities;
- The effectiveness of the Agency's CR compliance review program; and
- The Agency's Assurance Agreement process.

This review found that both Regions Two and Three were non-compliant with several CR requirements; inconsistent implementation of USDA/FS regulations, procedures and other mandates.² They include the following:

- Failure to educate program participants on their civil rights program responsibilities and to provide technical assistance in accordance with Departmental Regulation (DR) 4330-002;³
- Failure to collect demographic data on program participants in order to determine the extent to which members of minority groups are beneficiaries of Federally assisted and conducted programs;⁴

¹ 42 U.S.C. §§ 2000d -- 2000d-7.

² Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," 65 FR 50121-50122; and U.S. Department of Justice, Policy Guidance Document, "Enforcement of Title VI of the Civil Rights Act of 1964--National Origin Discrimination Against Persons With Limited English Proficiency" (65 FR 50123-50125).

³ DR 4330-002, *Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance from USDA* (March 3, 1999); reference § 7c (6) Chapter 7.

⁴ 28 C.F.R. § 42.406 Data and information collection.

- Failure to provide a non-discrimination statement to program participants in a Federally assisted program in accordance with *FS Civil Rights Handbook 1709.11, 20.3 #3*;
- Failure to update FS regulations;
- Terminating or suspending grazing permits; and
- Lack of a written LEP plan or framework for the provision of timely and reasonable language assistance for eliminating or reducing LEP as a barrier to accessing USDA programs and activities.

Finally, this Report details the findings and lists corrective actions to be taken on all noted deficiencies.

INTRODUCTION

Background

The Office of the Assistant Secretary for Civil Rights (OASCR), Office of Compliance, Policy, Training and Cultural Transformation (OCPTCT), Compliance Division (CD) conducted a CR Program Compliance Review of the Forest Service (FS) grazing and recreational programs in Regions Two and Three on April 1 thru June 14, 2013. The on-site review was from April 14–19, 2013, in Colorado and New Mexico.

The review determined whether of Regions Two and Three complied with CR laws and regulations in the administration and delivery of Federally assisted and conducted programs, services, and activities.

Purpose and Scope of Review

The review evaluated the CR programs and the FS Recreational Special Uses and Grazing Management programs to determine compliance with the Agency's regulations. In addition, the review determined the Agency's compliance with CR laws, USDA Departmental Regulations, procedures and policies pursuant to Title VI (Federally Assisted Programs) and Title VII (Equal Employment Opportunity).

The following were included in a review of the Agency's grazing land management and recreational accessibility policies for Hispanics and Native Americans (American Indians);

- Evaluating program delivery services in accordance with Sections 504 and 508 of the Rehabilitation Act of 1973;
- Evaluating the CR training provided to FS program participants and staff;
- Assessing the grazing permits process;
- Evaluating the implementation of the limited English proficiency (LEP) policies and procedures;
- Evaluating minority access to the National Forests in accordance with recreational, travel and land management regulations and policies; and
- Reviewing the travel and land management policies and practices as they relate to the overall accessibility.

The regions visited were:

- Region Two – San Juan National Forest, Southern Colorado (Durango, Colorado), Columbine Ranger District (Bayfield, Colorado), and Pagosa Ranger District (Pagosa Springs, Colorado);

- Region Three – **Carson National Forest**, Northern New Mexico (Taos, New Mexico) and Jicarilla Ranger District (Bloomfield, New Mexico);
- Region Three – **Cibola National Forest**, Central New Mexico (Albuquerque, New Mexico), Grants Mt. Taylor Ranger District (Grants, New Mexico), and Sandia Ranger District (Tijeras, New Mexico); and
- Region Three – **Southwestern Region Headquarters**, Albuquerque, New Mexico.

Methodology

The review was conducted in three phases:

1. Pre on-site preparation, planning, data collection and review;
2. On-site evaluation,⁵ data collection and observation; and
3. Off-site analysis and report preparation.

The on-site evaluation and data collection were conducted at selected District Ranger Offices within the San Juan, Carson, and Cibola National Forests.

The Team interviewed approximately 100 FS managers and employees; and contacted over 135 program participants including more than 50 participating by telephone. Also, the Team conducted a Focus Group of 10 present and former program participants.

Program Description: Grazing and Special Uses Programs

The FS manages 191.6 million acres of national forests and grasslands that comprise the National Forest System (NFS). The Agency's Special-Uses Program authorizes use of the land that provides a benefit to the general public while preserving the National Forest.

Under the Special-Uses Program, each year FS receives thousands of individual and business applications for authorization to use NFS land for such activities as water transmission, agriculture, outfitting and guiding, recreation, telecommunication, research, photography and video productions, and granting road and utility rights of ways. FS reviews each application to determine how the request affects the public's use of NFS land. Normally, the NFS land is not made available if the overall needs of the individual or business can be met on non-Federal lands. FS issues a special-use authorization such as a permit, lease, or easement which allows occupancy, use rights, or privileges of NFS land and is granted for a specific use of the land for a specific period of time.

The authorizations are granted based on: (1) a need to occupy, use, or build on NFS land for personal or business purpose; (2) a fee being charged or income being derived from the use; and (3) activity involving people or organizations with 75 or more participants or spectators. Permit holders pay an annual rental fee based on the fair market value for the uses authorized.

⁵ On-site evaluations were conducted through the use of questionnaires. Interviewees were notified that their identities would remain confidential and their participation in the Civil Rights Compliance Review is protected from retaliation and reprisal by the *Civil Rights Act of 1964, as amended*.

The three types of grazing permits are:

- **Temporary Grazing Permits** are generally issued for a short period of time to allow livestock to remain on the National Forest land.
- **Livestock Use Permits** are issued for a year or shorter for incidental use and are not intended to authorize commercial livestock production on National Forest lands. A common situation for issuing a Livestock Use Permit is to authorize Guide/Outfitter's stock during the period they are operating on the National Forest; and
- **Term Grazing Permits** are issued for up to 10 years to livestock producers throughout the West. When a Term Grazing Permit is issued to a newly qualified applicant, one must meet the base property ownership requirement to obtain a permit. This is met mostly through the purchase of existing base property that is recognized under an existing Term Grazing Permit. Individuals or businesses may inherit, obtain through foreclosures, or other means become owners of base property.

Demographic Data: States, Regions, and Districts Visited

According to the 2012 Census population data for the State of Colorado, 20.4 percent are Hispanic/Latino; 70.3 percent White; 3.7 percent Black; 2.7 percent Asian American; and 0.6 percent American Indian. In the State of New Mexico, 45.9 percent are Hispanic/Latino; 72 percent White; 2 percent Black; 1.3 percent Asian American; and 9.3 percent American Indian. The major American Indian tribes in Southwestern Colorado and Northern New Mexico are the Apache, Mountain Ute, Navajo, and Ute. (See Appendix A for a demographic breakdown of the sites visited.)

FINDINGS SUMMARY OF DOCUMENTATION AND CORRECTIVE ACTIONS

FINDINGS	RULE	CORRECTIVE ACTIONS
<ul style="list-style-type: none"> Based on interviews, Region Two staff indicated they completed all mandatory CR training on AgLearn for 2013 but found it to be ineffective. The employees interviewed did not remember specific course topics they received in the last year. The only face-to-face training or course discussed was one held in preparation for the fire season. Many program participants interviewed stated they had not received CR training and were unaware of their CR compliance responsibilities. Interviews with senior management officials disclosed they had not taken CR training in several years although the CR program is a critical element in their performance plans. FS employees and program participants have not been provided limited English proficiency (LEP) guidance and training. 	<p>DR 4300-5, <i>Agency Civil Rights Programs</i> (January 14, 1998), requires the Agencies to conduct annual CR training and collect and maintain employee participation records. These records must be submitted to the CR Director to ensure and document that all employees have received the training.</p> <p>Further, mission areas and Agencies must support the CR training with funding, staff assistance, and on-site coordination of training delivery, and by encouraging employees to apply the principles learned in the workplace. Agencies must also take the necessary steps to ensure that CR professionals and officials who are responsible for integrating the CR requirements into programs and activities receive the technical training necessary to properly carry out their responsibilities. (See also DM 4330-001, <i>Procedures for Processing Discrimination Complaints and Conducting Civil Rights Compliance USDA Conducted Program and Activities</i> (October 18, 2009), Chapter 5.</p>	<ul style="list-style-type: none"> Design training modules that are interactive; related to the mission of the unit; and targeted for specific purposes for an effective CR program. Develop and implement a 3-year CR training plan (Plan) for all employees and program participants, and incorporate the Plan in the proposed Regional Strategic Plan. The Plan should include the following: <ul style="list-style-type: none"> a) Interactive discussions on subjects related to the CR responsibilities of employees and program participants, such as public notification, data collection, monitoring, reporting, and data maintenance to evaluate program participation; b) Training modules that address the LEP guidance and requirements; c) Time tables for implementation; d) The types of program participants, including Special Uses and Grazing permittees (i.e., allotment owners) to receive trainings; and e) The staff person(s) responsible for providing the training. Submit the Plan to the Regional CR Director for approval prior to dissemination and

	Public Notification and Outreach	
FINDINGS	RULE	CORRECTIVE ACTIONS
<ul style="list-style-type: none"> The non-discrimination statement was consistently omitted from key documents, such as the grazing permit applications. The program brochures lacked diversity and included only images of White males and females. There was no documentation that brochures were in an alternate language except for a children's coloring book in Spanish at one of the District Ranger Offices. In most of the Ranger District Offices visited, the "And Justice for All" posters, CR policy statements, anti-harassment policy statements and EEO policy statements were not prominently posted in public areas. FS staff indicated there was no LEP plan, guidance or informational materials available in the Regional and Ranger District Offices. Many program participants indicated the FS 	<p>7 C.F.R. Section 15.5(d), requires Agencies and recipients to ensure that program participants/beneficiaries and other interested persons are informed of the CR requirements of Title VI. [See also 28 C.F.R. Section 42.106(d).] The information, including complaint procedures, must be prominently displayed on posters and in pamphlets or other materials that are distributed to the public to describe the recipient's programs. (See 28 C.F.R. Section 42.405.)</p> <p>Based on Federal law, each Agency shall prepare a plan to improve access to its programs and activities by eligible LEP persons. Agencies are required to examine the services they provide; identify any need for services to those with LEP; and develop and implement a system to provide those services and meaningful access to them.</p> <p>USDA Agencies must develop a written LEP plan (Plan) to provide timely and reasonable language assistance and for eliminating or reducing LEP as a barrier to accessing USDA programs and services. (See Executive Order</p>	<p>implementation. A copy of the approved plan should be sent to OASCR, OCCPTCT, Compliance Division.</p> <ul style="list-style-type: none"> Ensure that senior management officials demonstrate a commitment to CR by timely completing the mandatory CR and EEO training. Include the required non-discrimination statement on all documents, and advise program participants of the meaning of the statement. All program participants should confirm their receipt of notification and understanding by signature and date. Ensure that the Regional, Forest Supervisor, and District Ranger Offices, and program participants include the non-discrimination statement on all outreach and recruitment materials; news articles submitted to newspapers for publication; and any other written material that is distributed to the public. Educate program applicants, who advertise on the website, about the importance of the non-discrimination statement and alternative communications methods as part of the Assurance Agreements and contracts. Ensure that the Regional, Forest Supervisor, and District Ranger Offices, and the program participant offices prominently display the USDA's "And Justice for All" poster, and widely disseminate the "Complying with Civil Rights

<ul style="list-style-type: none"> • did not provide interpreters or LEP materials to Hispanic/Latino ranchers and other participants who spoke little English. In addition, FS websites did not contain links to its services in other languages that were commonly spoken in the area. • Most of the websites for program participants did not contain the non-discrimination statements or information on alternative methods of communication. • Most program participants indicated that the outreach efforts by both Regions were minimal or non-existent. • FS representatives are required to meet with program participants and discuss the Annual Operating Instruction (AOI). According to the program participants, FS staff prepares the AOI and tells them "to take or leave it" with little or no discussion. • All program participants interviewed stated "the AOI is supposed to be a joint venture, but FS cuts and pastes the AOI and arbitrarily changes the allotment size from year to year." As a result, this delays entry dates and reduces the grazing period, thereby causing a loss of money. • Many program participants indicated the technical assistance meetings are intended by FS to threaten discontinuance of benefits and/or to announce cuts in services once afforded by permits and contracts. 	<p>13166A, <i>Improving Access to Services for Persons with Limited English Proficiency</i> (August 11, 2000); DR 4330-005.)</p> <p>Also, the CR non-discrimination policy must be communicated to the public through all appropriate USDA public information channels in English and in languages appropriate to the local population, and in alternative means of communication (Braille, large print, audiotape, etc.).</p> <p>Agencies must develop and implement a communications plan that includes an adequately funded outreach component to ensure that publications, documents, advertisements, and other program information materials are in appropriate format and language to accommodate all program participants.</p> <p>In regard to outreach efforts, the Agency is required to use positive images and examples of employment and program participation by minorities, women and other protected groups in pictures and other visual and audio public information materials.</p>	<p><i>Requirements</i>" brochure.</p> <ul style="list-style-type: none"> • Develop and implement a written Plan to address and identify the needs of the LEP populations served in the FS Regions. • Develop program literature and informational materials with images and photos that represent a diversity of participants. • Implement a language assistance service through both oral and written notice in primary languages spoken by a significant number of customers and potential customers in the service areas. • Provide Interpreters when conducting a technical assistance review with the LEP program participants. • Require public notification and outreach strategies include the minority media and the program materials are available in languages appropriate to the community being served. Websites should provide available links to other languages commonly spoken in the area. • Provide a written report to the Regional CR Director regarding the status of the actions and activities identified in the Public Notification and Outreach Plan. • Utilize the technical assistance meetings as outreach opportunities to provide information and positive assistance on contracts, permits, and discuss CR issues.
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FINDINGS	Data Collection and Analysis RULE	CORRECTIVE ACTIONS
<ul style="list-style-type: none"> Program participant data is not collected by race, color, and national origin. The program management officials and employees interviewed from either Region were unaware of the statutory requirement for collecting and maintaining program eligibility and participation data according to race, color, and national origin. The Team randomly examined records and files representing the Recreational Special Use Program and the Grazing Program at the various sites which found no relevant data reflecting compliance with USDA's policies on data collection and reporting. Also, there were no files or records that addressed the issue or reflected the status of parity in program participation. 	<p>7 C.F.R. Section 15.5(b) requires that recipients of Federal assistance ensure the collection and maintenance of program participant data in order to determine the extent to which members of minority groups are beneficiaries of Federally assisted programs.</p> <p>Further, the Agencies are required to install a system for the statistical evaluation, analysis and reporting in order to measure program participation and determine the extent to which underserved communities benefit from the programs and activities of the Agency. (See DR 4300-005.)</p> <p>In accordance with the <i>Food, Conservation, and Energy Act of 2008 (2008 Farm Bill)</i>,⁶ the U.S. Congress requires an annual report of the participation rate of socially disadvantaged farmers and ranchers for each USDA program established for farmers and ranchers, according to race, ethnicity and gender, by county and State.</p>	<ul style="list-style-type: none"> Establish a system to collect and maintain accurate data on potential and actual program participation in order to determine how effectively the programs are reaching protected groups and to provide input for management purposes. The demographic data must be organized and analyzed based on the Region and District Ranger Offices. Develop data collection guidelines and procedures that address the population of recipients and program participants to ensure that adequate data is available and evaluated. The guidelines and procedures should be tailored appropriately for each type of program participant. Train FS program management officials and employees regarding the Departmental regulatory requirement to collect and maintain data on program participants according to race, ethnicity and gender. Collaborate with Human Resources to build relationships that support sharing information regarding hiring data to create a more diverse workforce. (Reference the Equal Employment Opportunity Commission's <i>Management Directive 715</i>.)

⁶ See *Food, Conservation, and Energy Act of 2008* (June 18, 2008), "Transparency and Accountability for Socially Disadvantaged Farmers and Ranchers," Section 14006, *Public Law 110-246* (7 U.S.C. § 8701).

Program Participation

FINDINGS	RULE	CORRECTIVE ACTIONS
<ul style="list-style-type: none"> FS does not collect any program data regarding the potential, eligible and actual client populations served in both Regions. Therefore, it was not possible to provide a definitive analysis of the level of compliance with USDA's non-discrimination requirements. Most program participants interviewed were unaware of the Federally assisted program CR responsibilities. The regulations for penalties regarding allotments are not clearly articulated or consistent for fines and violations. The FS point of contact referred the Team to Handbook 2209-13-2012 chap. 16 pg. 34, which does not specifically define the penalties. Most program participants stated the grazing regulations are outdated, and the prohibitive cost of property makes it difficult for program participants (such as allotment owners) to meet the grazing requirements. Many program participants indicated the terms and conditions in the AOI are not achievable, stating, "FS staff does not use 	<p>7 C.F.R. Section 15.3 states that, "The regulations implementing Title VI prohibit recipients from denying program services or benefits to any person based on race, color, or national origin." Thus, the Agencies are responsible for enforcing the Title VI⁷ compliance responsibilities of all program participants.</p> <p>Forest Service Handbook (FSH) 2209.13 -- <i>Grazing Permit Administration Handbook Chapter 90 – Rangeland Management Decision-making</i> (June 8, 2007)</p> <p>FSH 2231.22 – <i>Qualification Requirements, 2231.22a – Term Permits. To qualify for a term grazing permit, an applicant must own base property and livestock (except leased breeding sires – Forest Service Manual (FSM) 2234.17) to be permitted.</i></p> <p>FSH 2209.13, section 12.2 – <i>Qualification Requirements. To qualify for a grazing permit with term status, an applicant must own base property and livestock to be permitted.</i></p> <p>FSH 2209.13, section 12.21 – <i>Base Property Ownership Requirements. Where base property is jointly owned, all of the owners</i></p>	<ul style="list-style-type: none"> Establish a data collection system of all Title VI program participants in accordance with Section 3 above (<i>Data Collection and Analysis</i>). Provide program participants with updated policies and procedures in written form. Develop a focus group to improve working relationships and communications between FS and program participants. Provide clarity and articulate the intent of the <i>Taylor Grazing Act of 1934 (Grazing Act)</i>⁸ for program participants, of which many perceive as superseding the authority of FS regulations on rangeland management. The <i>Grazing Act</i> authorizes the Secretary of the Interior to establish grazing districts on Federal public lands, and it does not impact FS grazing regulations and policies. Implement the FS regulations in a more consistent manner with program participants. There is an inconsistency in the implementation of the procedures in Regions Two and Three in contrast to the procedures administered by Headquarters. Develop and implement a uniform application of the FS grazing permit validation procedures in

⁷ 28 C.F.R. Section 42.401; 7 C.F.R. Section 15.3; DR 4330-2 Section 8(a) (March 3, 1999).

⁸ 43 U.S.C. Section 315

<p>the best science to develop the terms.” As a result, program participants feel they are forced to do what FS staff dictates or they will not be allowed access to FS grazing lands for their livestock.</p> <ul style="list-style-type: none"> Many program participants stated the FS staff uses “Gestapo” intimidation tactics, such as constant threats, suspension of permits, retaliation, and discrimination. 	<p>must apply for the term permit. In other words, an individual’s permit application will be rejected if the base property identified therein is jointly owned and the other owners are not listed as applicants for the permit.</p> <p>FSH 2209.13, WO Amendment 2209.13-92-1(14.35) - Certificates of Brands, Require that an applicant submit a copy of the certificate of brand for the record.</p> <p>FSH, Chapter 96.3, Annual Operating Instructions (AOD) – To the extent feasible, the AOI should be developed with, and signed by the permittee.</p>	<p>accordance with FS regulations.</p> <ul style="list-style-type: none"> Provide technical assistance to the program participants in developing the AOI to ensure an open, cooperative and inclusive process.
<p>FINDINGS</p> <ul style="list-style-type: none"> The three National Forest Offices that were visited by the Team fulfilled most of the requirements for reasonable accommodations and accessibility guidelines regarding persons with disabilities. However, the Team did find doors at some sites were not in compliance with the Americans with Disabilities Act (ADA). The doors were extremely difficult (i.e., too heavy) to open; and there was an issue with the access ramp at two sites visited. FS staff was unaware of either the disability requirements or the reasonable accommodations policy. Most FS staff stated they were unaware of the reasonable accommodation process or 	<p>RULE</p> <p>7 C.F.R. Part 15b states that, “Regulations implementing Section 504 of the Rehabilitation Act of 1973, prohibit recipients from denying benefits or services to persons on the basis of handicap.” The regulation further states that the Agency is responsible for ensuring the compliance of its recipients and program participants with the applicable Federal non-discrimination statutes, regulations and policies. (Reference <i>Civil Rights Act of 1964, as amended</i> (Title VI); 28 C.F.R. Part 41; and DR 4330-002.)</p>	<p>CORRECTIVE ACTIONS</p> <ul style="list-style-type: none"> Conduct a facility accessibility survey and develop a transition plan with specific target dates for completion to address all identified barriers. Educate FS staff about the disability issues and reasonable accommodations policy, and also ensure that they are aware of the designated Disability Program Manager responsible for the Region. The Staff should know who to go to if there is a reasonable accommodation issue, and the Disability Program Manager needs to be fully knowledgeable of their job responsibilities.

<p>the name of the Disability Employment Program manager.</p> <ul style="list-style-type: none"> Many FS stated the Facility and Program accessibility was in compliance with Section 504 and the ADA; several noted they needed to improve especially with respect to Section 508 accessibility. 		
FINDINGS		
<p>The Review Team determined the Agency's methodology for evaluating the CR compliance of the Regions Two and Three is insufficient. The Agency's methodology does not allow for a thorough and objective analysis of its program delivery services.</p>	RULE	CORRECTIVE ACTIONS
<p>a) The Agency's timetable for initiating a compliance review of its programs is not in accordance with their proposed fiscal year schedule.</p> <p>b) The Agency, in the alternative, utilizes <i>FS Form 1700-6</i>, which is a checklist and does not allow for appropriate analysis or comprehensive description of program activities.</p> <p>c) Based on interviews with FS recreation management officials, the Reviews are conducted by staff who are either directly responsible for the Recreational Special Use Permits and Range Management Programs or by the administrative staffs at the Forest level. Further, there is no evidence that the</p>	<p>7 C.F.R. Section 15.3 requires the Agency to review and monitor the activities and program service delivery mechanisms of recipients to determine whether they are complying with the appropriate CR laws and regulations.</p>	<ul style="list-style-type: none"> Develop and implement a compliance review and evaluation system that incorporates the requirements of the CR laws, regulations and policies. Conduct compliance reviews according to set time schedules and in collaboration with the FS and USDA CR staff. Ensure that the findings and corrective actions from the compliance reviews are incorporated into the appropriate management reports.

<p>information obtained is used to produce a regional or forest-wide document that can be used for reporting, monitoring and follow-up.</p> <p>d) Most interviewees indicated that few compliance reviews were being done. However, the data requested from FS indicates that over the course of the last three years, the CR Office reported it had completed 202 desk audit reviews, and 214 compliance reviews.</p> <p>e) Many of the program participants stated that National Forest Service has not demonstrated their commitment to CR.</p> <p>f) Some FS employees emphasized compliance reviews should include clients of the program participants.</p>		
<p>FINDINGS</p> <ul style="list-style-type: none"> Interpretations of the Assurance Agreements are inconsistent, and many FS staff did not understand the process or could not provide an office policy or procedure. 	<p>REQUIREMENTS</p> <p>Departmental regulation requires the Agencies to obtain written Assurance Agreements from all recipients applying for Federal financial assistance, and to assure that the current agreements are maintained, reviewed, and monitored.</p>	<p>CORRECTIVE ACTIONS</p> <ul style="list-style-type: none"> Provide consistent, standard operating guidelines on Assurance Agreements and the regulations that govern them.

CONCLUSION

Based on the overall findings regarding FS Regions Two and Three, the Team has determined that FS is in non-compliance with many CR program requirements and responsibilities.

Many FS management officials and employees were unaware of the basic CR requirement to include the non-discrimination statement in the program brochures and contracts. The inconsistent use of the non-discrimination statement on its brochures and other public documents violates Departmental regulations that require all public documents include the non-discrimination statement.

During the interviews with FS management officials, employees and program participants, it was apparent that effective CR training is lacking in the different regional and district areas. For example, the lack of definitive responses from both employees and program participants, regarding CR training, shows training is not reviewed or regarded as an essential performance responsibility or obligation. Both management and non-management employees were unable to differentiate between CR and Equal Employment Opportunity (EEO) training. More troubling was the disclosure by management officials that they had not received CR training in several years. It is essential that FS provide effective CR training to all employees to include conducting effective outreach methods; improving LEP guidance; providing reasonable accommodation; and ensuring equal opportunity in the delivery of program services for all participants. Additionally, FS should develop and implement a 3-year CR training plan for both employees and program participants.

The Agency's outreach efforts were minimal or non-existent. Public notification and outreach efforts to program participants were limited to a couple of programs with two local colleges. Based on interviews with program participants and the focus group, many felt FS omits them from the decision-making process when changes are implemented in the grazing program. For instance, many program participants pointed out that at the beginning of each grazing season, FS representatives are required to meet with them to discuss the Annual Operating Instruction (AOI). Instead of the process being a collaborative effort, the Team was repeatedly told FS staff prepares the AOI and tells the program participant "to take it or leave it" with little or no further discussion on the matter. The Team was further informed that the AOI is arbitrarily changed each year regarding the allotment size. As a result, this practice delays the entry dates and reduces the grazing period, thereby causing a loss of money for the program participant.

There were no LEP initiatives to provide outreach to the communities where English is a second language. FS must take reasonable steps to ensure LEP individuals receive the language necessary for meaningful access to USDA programs and activities. For example, the special use and grazing permits were written in English, but not translated in Spanish, which shows that neither the Regional Offices, nor Headquarters are serious about LEP services. The lack of required resources for LEP individuals does not support USDA's policy for ensuring equal access to FS programs. FS must improve its relationship and communications with the Hispanic program participants by providing them the requisite LEP services, technical assistance and outreach services to engage them fully and openly.

FS has no system in place for program management officials or employees to collect program participant data according to race, color, and national origin. This information would improve

the operation of the program; help design additional opportunities for program participation; monitor adherence to laws that require equal access for eligible persons; and develop effective compliance reviews of programs and participants. Many of the program participants raised concerns of discriminatory treatment towards minority participants, resulting in many of them having their grazing permits either terminated or suspended. It is essential that FS develop data collection guidelines and procedures to address the population of program participants.

The interpretation and understanding of the Assurance Agreements by program participants appears to be inconsistent. Many of the FS program staff did not clearly understand the process, nor could they provide documentation of office policies or procedures. Most program participants were unaware of their Federally assisted CR responsibilities. Therefore, FS management and program officials should provide program participants with consistent and standard operating guidelines on the FSH, FSM, Assurance Agreements, and current governing regulations.

Many of the findings in this report reflect the lack of CR monitoring by both FS Regional Offices and Headquarters. Although FS stated CR compliance reviews have been previously conducted, there was no definitive evidence provided to support the implementation of any substantial reviews.

Finally, there remains a critical need to emphasize and strengthen CR training and outreach initiatives so that both management and staff can carry out their duties more efficiently, both within and outside the organization, to address the disparities and barriers regarding program delivery to all program participants. The findings of this report will be alleviated and/or improved, if FS diligently adheres to CR laws and regulations including LEP; and updates and consistently implement its regulations, policies and procedures, as mandated.

CORRECTIVE ACTION PLAN

FS must develop a detailed Corrective Action Plan (CAP) within 60 days of receipt of this Report. The plan must include timeframes for completion and identification of the responsible person for implementation of the actions. The plan also must include any progress made in these areas since the review. The CAP should be sent to:

Department of Agriculture
Office of Compliance, Policy and Training
Attention: Geraldine Herring, Chief
Compliance Division
300 7th Street, SW, Room 620
Washington, D.C. 20024
Facsimile: (202) 690-2345

APPENDIX A

**Demographics for Colorado:
National Forest and Ranger Districts Reviewed**

State of Colorado

	Hispanic or Latino (of any race)	Not Hispanic or Latino	White alone	Black or African American alone	American Indian alone	Asian alone	Native Hawaiian & Other Pacific Island alone	Some other race	Two or more races	People Below Poverty	Families below poverty
<i>Colorado</i>	20.4%	79.6%	70.3%	3.7%	0.6%	2.7%	0.1%	0.2%	2.1%	12.5%	8.7%

**Durango, Colorado
(San Juan National Forest)**

	Hispanic or Latino (of any race)	Not Hispanic or Latino	White alone	Black or African American alone	American Indian alone	Asian alone	Native Hawaiian & Other Pacific Island alone	Some other race	Two or more races	People Below Poverty	Families below poverty
<i>Durango, New Mexico</i>	12.28%	87.72%	85.12%	0.59%	0.32%	0.83%	0.04%	4.09%	3.00%	7.30%	11.20%

**Bayfield, Colorado
(Columbine Ranger District)**

	Hispanic or Latino (of any race)	Not Hispanic or Latino	White alone	Black or African American alone	American Indian alone	Asian alone	Native Hawaiian & Other Pacific Island alone	Some other race	Two or more races	People Below Poverty	Families below poverty
<i>Bayfield, Colorado</i>	13.24%	86.76%	88.43%	.21%	4.07%	.26%	.04%	3.26%	3.73%	5.80%	2.90%

**Pagosa Springs, Colorado
(Pagosa Ranger District)**

	Hispanic or Latino (of any race)	Not Hispanic or Latino	White alone	Black or African American alone	American Indian alone	Asian alone	Native Hawaiian & Other Pacific Island alone	Some other race	Two or more races	People Below Poverty	Families below poverty
<i>Pagosa Springs, Colorado</i>	41.34%	58.66%	70.58%	.69%	2.61%	.29%	.12%	21.31%	4.40%	8.20%	11.90%

**Dolores, Colorado
(Dolores Ranger District)**

	Hispanic or Latino (of any race)	Not Hispanic or Latino	White alone	Black or African American alone	American Indian alone	Asian alone	Native Hawaiian & Other Pacific Island alone	Some other race	Two or more races	People Below Poverty	Families below poverty
<i>Dolores, Colorado</i>	10.90%	89.10%	90.38%	.32%	2.14%	.11%	.21%	3.10%	3.74	12.40%	16.30%

**Demographics for New Mexico:
National Forests and Ranger Districts Reviewed**

State of New Mexico

	Hispanic or Latino (of any race)	Not Hispanic or Latino	White alone	Black or African American alone	American Indian alone	Asian alone	Native Hawaiian & Other Pacific Island alone	Some other race	Two or more races	People Below Poverty	Families below poverty
<i>New Mexico</i>	45.9%	54.1%	72.0%	2.0%	9.3%	1.3%	0.1%	12.3%	3.0%	19%	14.4%

**Taos, New Mexico
(Carson National Forest)**

	Hispanic or Latino (of any race)	Not Hispanic or Latino	White alone	Black or African American alone	American Indian alone	Asian alone	Native Hawaiian & Other Pacific Island alone	Some other race	Two or more races	People Below Poverty	Families below poverty
<i>Taos, New Mexico</i>	56.10%	44.90%	88.30%	.80%	7.30%	.90%	.10%	.00%	2.60%	21.50%	23.10%

**Bloomfield, New Mexico
(Jicarilla Ranger District)**

	Hispanic or Latino (of any race)	Not Hispanic or Latino	White alone	Black or African American alone	American Indian alone	Asian alone	Native Hawaiian & Other Pacific Island alone	Some other race	Two or more races	People Below Poverty	Families below poverty
<i>Bloomfield, New Mexico</i>	31.69%	68.31%	67.32%	.62%	18.27%	.44%	.02%	9.81%	3.51%	24.60 %	20.90%

**Albuquerque, New Mexico
(Cibola National Forest, Southwest Region)**

	Hispanic or Latino (of any race)	Not Hispanic or Latino	White alone	Black or African American alone	American Indian alone	Asian alone	Native Hawaiian & Other Pacific Island alone	Some other race	Two or more races	People Below Poverty	Families below poverty
<i>Albuquerque, New Mexico</i>	46.73%	53.27%	69.72%	3.29%	4.60%	2.65%	.11%	15.03%	4.61%	16.60%	13.50%

**Grants, New Mexico
(Grants Mt. Taylor District)**

	Hispanic or Latino (of any race)	Not Hispanic or Latino	White alone	Black or African American alone	American Indian alone	Asian alone	Native Hawaiian & Other Pacific Island alone	Some other race	Two or more races	People Below Poverty	Families below poverty
<i>Grants, New Mexico</i>	50.65%	49.35%	75.79%	.74%	1.48%	.37%	0.00%	18.30%	3.33%	16.60%	15.10%

**Tijeras, New Mexico
(Sandia Ranger District)**

	Hispanic or Latino (of any race)	Not Hispanic or Latino	White alone	Black or African American alone	American Indian alone	Asian alone	Native Hawaiian & Other Pacific Island alone	Some other race	Two or more races	People Below Poverty	Families below poverty
<i>Tijeras, New Mexico</i>	52.08%	47.92%	57.43%	1.73%	16.91%	.85%	.22%	18.53%	4.33%	18.72%	17.27%

SUMMARY OF MY NOTES ON TELECONFERENCE WITH NORTHERN NEW MEXICO STOCKMAN ASSOCIATION MEMBERS – JUNE 11, 2013

Members attending were from 1) Espanola District, NM; 2) El Rito Ranger District, NM; 3) La Coyote Ranger District, NM; 4) Canjilon Ranger District, NM; and 4) Pagosa Ranger District, CO. They all have grazing allotments and raise cattle. Grazing permittees.

The Northern New Mexico Stockman Association was founded in 1990 to protect grazing rights of stock (cattle) owners.

Major concerns raised by the attendees who say that the following are only the tip of the iceberg:

1. Difficulty with Forest Service (FS) when selling grazing rights and transfers must be made
2. FS threatens us if we don't abide by their rules. FS is supposed to meet with us, but their attitude is "take it or leave it!"
3. FS has unilateral authority. No due process. We don't have input. "If you don't sign, you don't graze."
4. We must pay for environmental studies FS cooks up and this is to put us out of business.
5. FS shortens the grazing season without input from us
6. FS brings in people from other parts of the country to deal with issues of grazing about which they know nothing.
7. FS has its own style of management and doesn't listen to ranchers. We are under constant threat and it's always, "My way or the highway!"
8. In Rio Arriba, they terrorize our communities and some have turned into ghost towns.
9. FS retaliates against us by reducing or suspending our permits when we stand up for your rights.
10. FS puts fences around our allotments and water thus forcing our cattle to go long distances to water.
11. A fifth generation permittee Chacon accuses the FS of "treating him badly and because FS personnel don't know our system, they do injustices to us."
12. "FS orders us around when all what we want is to protect our rights."
13. FS terrorizes our people who go to pick herbs or collect wood in the forests by not allowing us to engage in these activities. They are constantly patrolling the forest.
14. FS manages the ranches in this way because they know we are poor and can't defend ourselves. Our appeals for justice don't go anywhere. (Compares FS to the Nazis and their Gestapo tactics)
15. People here are poor because BLM and FSW have gradually been taking our lands away.
16. FS conspires with environmentalist groups to get our ranchers out of business and destroy our way of life. FS really doesn't take care of the lands.
17. FS uses intimidation, constant threats, discrimination, and retaliation in their dealings with the ranchers.

18. Women don't stand a chance with the FS. One woman attendee said that she owns a large allotment and during a recent drought FS asked her to get her cattle out of the forest although no other rancher was told to do so. She said she paid her full permit.
19. FS makes arbitrary decisions. Most FS upper management people are white and they get their Hispanic employees to whip and pressure us to give up our lands. FS takes our water and lands to get rid of us.
20. FS takes wood collectors to federal courts in Albuquerque where they don't stand a chance because they are poor and don't know how to defend themselves.
21. Under the Treaty (Guadalupe), water is free, but FS is not taking care of the woods.
22. There is no outreach and no communication with the ranchers. All they do is work in offices and drive around in their cars.
23. One permittee from El Rito said he got out of the ranching business because of El Rito's District management of permittees. An FS supervisor (Buck Sanchez) would never cooperate with the ranchers.
24. FS never attempts to do impact studies on small ranchers and frequent change in FS personnel makes it difficult to deal with them. "Everyone has failed to help us."
25. Dave Sanchez? said that FS has not demonstrated their commitment to civil rights. "The civil rights of our people have been violated."
26. Most Hispanic ranchers don't speak English well, but FS doesn't do any outreach nor do they have any LEP and other language access materials to share with us.

Recommendations:

1. Make FS understand that they are not the police. Don't make us prisoners in our own homes. FS wants to attend only to the rich folks.
2. FS hasn't recognized the grazing rights of the ranchers – fifteen generations of Indians and Hispanics. They must do so.
3. FS should insert directives in 2012 rules to prevent forcing grazers to sign contracts???
4. Because of our sense that it is futile to appeal anything, an independent board should be created to look into these matters.
5. Environmental impact studies should be conducted on land and local communities.
6. We are now recognized as a historic heritage site reducing us to mere museum pieces. FS should recognize that we are the best stewards of the land.