

**South Dakota
Department of Agriculture & Natural
Resources**

Nondiscrimination Policy

July 19, 2022



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INTRODUCTION

The South Dakota Department of Agriculture and Natural Resources (DANR) is a state agency created by South Dakota Codified Laws, Chapter 1-41. The department Secretary serves on the governor's cabinet.

DANR conducts environmental monitoring, oversees environmental cleanup, registers pesticide products sold in South Dakota, reviews and approves plans and specifications, and issues environmental permits and approvals using delegation/authority given to the department by the U.S. Environmental Protection Agency. DANR also issues environmental permits and permits for the appropriation of water; implements state commercial fertilizer laws, soil amendment laws, anhydrous ammonia storage rules, and bulk commercial fertilizer storage rules; trains and licenses pesticide applicators; protects bees; manages and maintains the State Fairgrounds for year-round cultural and community events; and implements other environmental and agricultural programs based solely on state laws and administrative rules. The department provides grant and loan funding for water, wastewater, stormwater, and solid waste projects. The department also carries out programs to promote conservation, forestry, and watershed protection, and conducts scientific investigations that are designed to generate information on South Dakota's geologic and hydrologic resources. Figure 1 is the department's organizational chart.

Our Mission

To protect and preserve agriculture, environment, and natural resources through effective regulatory services, natural resource conservation, and financial and technical assistance.

Our Vision

A South Dakota with a prosperous economy, diverse agricultural opportunities, clean air, clean water, and healthy families.

Integrity

Integrity through transparent government services and science-based decision making.

Excellence

Excellence through hiring, developing, and empowering highly engaged and well-trained employees.

Customer Service

Customer Service through consistent, timely, and professional interactions with everyone we meet.

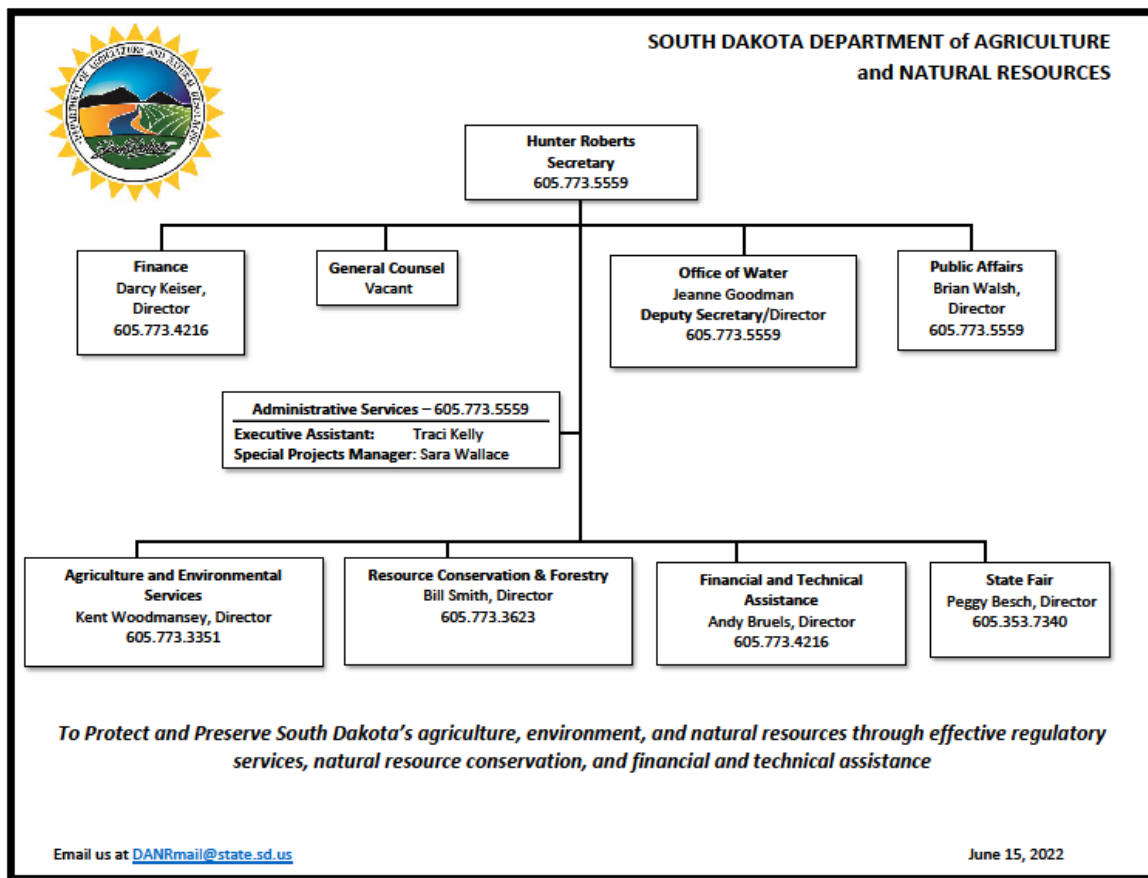


Figure 1. – [DANR Organizational Chart](#)

NONDISCRIMINATION POLICY

DANR is committed to ensuring that no person is excluded from participation in, denied the benefits of, or subjected to discrimination under any program, activity, or service that it provides. DANR will not tolerate intimidation, threats, coercion, or discrimination against any individual or group. This policy establishes a framework for taking reasonable steps to ensure access to all services provided by DANR for all people/projects and establishes the DANR procedures for receiving and investigating allegations of discrimination.

DANR provides services without regard to race, color, national origin, disability, age, or sex, according to the provisions contained in, but not limited to:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin (including limited English proficiency)
- Title VII of the Civil Rights Act of 1964, as amended, 'Equal Employment Opportunity'

- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability
- Title IX of the Education Amendments Act of 1972, which prohibits discrimination based on sex in education programs or activities
- Equal Credit Opportunity Act of 1974, Title VII of the Consumer Protection Act of 1974, as amended, Section 701 of the Equal Credit Opportunity Act of 1974, Public Law 93-49, 15 USC 1691
- Age Discrimination Act of 1975, which prohibits discrimination based on age
- Americans with Disabilities Act of 1990, as amended; Americans with Disabilities Act of 2008
- Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) related to physically handicapped persons' ready access to, and use of, buildings and facilities for which Federal funds are used in design, construction, or alteration
- Civil Rights Restoration Act of 1987
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500
- U.S. Environmental Protection Agency (EPA) regulation 40 CFR Part 7
- U.S. Department of Agriculture (USDA) regulation 7 CFR Part 15, and 12 CFR Part 202
- U.S. Department of Defense (DoD) regulations at 32 CFR, Parts 56, 195, and 196; and
- South Dakota Human Relations Act of 1972 - https://sdlegislature.gov/Statutes/Codified_Laws/2045767, including SDCL, Section 20-13-24 - https://sdlegislature.gov/Statutes/Codified_Laws/2045733, and the Administrative Rules of South Dakota, Article 20:03 - <https://sdlegislature.gov/Rules/Administrative/2918>.

DANR complies with the laws, regulations, and rules listed above as a recipient of federal assistance from the U.S. Environmental Protection Agency (EPA), the United States Department of Agriculture (USDA), the Department of Defense (DoD), and the Department of Homeland Security (DHS). DANR cannot, based on race, color, national origin, disability, age, or sex either directly or through contractual means, take any of these actions:

- Deny program services, aid, or benefits;
- Provide a different service, aid, or benefit;
- Provide service, aid, or benefit in a manner different from what is provided to others; and
- Deny an opportunity to participate as a member of a planning, advisory or similar body that is an integral part of the department.

Based on federal guidance, DANR's Nondiscrimination Policy includes:

A. A Notice of Nondiscrimination under Nondiscrimination Laws

DANR's Notice of Nondiscrimination (**Attachment A**) is prominently posted in DANR's office locations which are listed at <https://danr.sd.gov/ContactUs/default.aspx> and on DANR's website at <https://danr.sd.gov/public>. The U.S. Forest Service has a specific notice that they require be posted. In lieu of the DANR Notice, the Forest Service Notice will be posted in the Pierre office area near where staff funded by the Forest Service are located and in each regional office with all staff fully funded by the Forest Service.

B. Procedures for Complaints Filed Under State or Federal Nondiscrimination Laws

DANR's Complaint Procedures (**Attachment B**) for complaints filed under state or federal nondiscrimination laws are posted on DANR's website. These procedures explain the process to file a complaint, how complaints will be investigated, and how complainants will be informed in writing of the progress and disposition of their complaint. DANR's Nondiscrimination Coordinator's contact information is also provided.

C. Information on DANR's Nondiscrimination Coordinator

Identifying DANR's Nondiscrimination Coordinator and the providing of information on the role of DANR's Nondiscrimination Coordinator ensures the department's compliance with state and federal nondiscrimination laws. The Nondiscrimination Coordinator duties include:

- Providing information to individuals internally and externally indicating DANR does not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of our programs or activities and does not intimidate or retaliate against any individual or group because they have exercised their rights

- to submit a complaint or testified, assisted, or participated in a discrimination investigation, proceeding or hearing;
- Providing DANR’s Notice of Nondiscrimination and DANR’s complaint form and ensuring the Notice is posted in DANR’s Pierre office, each regional office, and on DANR’s website at <https://danr.sd.gov/public>, and ensuring the complaint form is available at each DANR office and on DANR’s website;
 - Ensuring information on DANR’s Nondiscrimination Policy is kept up to date, is in the department’s policy manual, and is externally available;
 - Maintaining the department’s Notice of Nondiscrimination, and procedures for receipt and processing of complaints;
 - Tracking and reviewing complaints received and looking for patterns or systemic problems;
 - Ensuring complainants are updated on the progress of their discrimination complaints filed with DANR and are promptly informed of any determinations made;
 - Training DANR staff on DANR’s Nondiscrimination Policy and the procedures it contains, ensuring they understand the complaint process available to resolve discrimination complaints and DANR’s obligation to comply with nondiscrimination laws, regulations, and rules;
 - Providing written information on receipt, progress, and final disposition of discrimination complaints to complainants;
 - Conducting semiannual reviews of all complaints filed with DANR and/or any other complaints independently investigated by the department to identify and address any patterns or systemic problems; and
 - Annually reviewing DANR’s Nondiscrimination Policy, and procedures for both print and online materials and recommending updates based on available census data, laws, regulations, rules, and complaints that occurred during the past year to ensure fair resolution of discrimination complaints; during this review, also evaluating the efficacy of DANR efforts to provide services, aids, benefits and participation in any DANR programs or activities without regard to race, color, national origin, disability, age, or sex. The department does not intimidate or retaliate against any individual or group because they have exercised their right to submit a complaint or testified, assisted, or participated in a discrimination investigation, proceeding or hearing.

The Nondiscrimination Coordinator cannot have other job duties or responsibilities that create a conflict of interest (for example: serving as the Nondiscrimination Coordinator as well as DANR’s legal advisor or representative on civil rights issues).

D. DANR’s Nondiscrimination Policy Complaint Processing Procedures

Attachment C establishes the department’s procedures for investigating allegations of discrimination.

E. An Assessment of DANR’s Obligation to Provide Access to Limited English Proficiency (LEP) and Disabled Persons

The department has no formal plan for providing language assistance for persons with limited English proficiency. The department completed a four-factor analysis (**Attachment D**). South Dakota’s minority population is low and the population with limited English proficiency is minimal. The department handles outreach to people with limited English proficiency on a case-by-case basis. The department has access to interpreter services and provides information in alternative languages upon request. The department is constantly reviewing the needs of those served with limited English proficiency and acts where appropriate.

F. Public Participation Procedures

When a department rulemaking, permit issuance/reissuance, or other regulatory process includes a public notice process, that notice is put on the department’s one-stop public notice website at <https://danr.sd.gov/public>. The website includes all active public notices, information on any deadline to submit comments or a petition for a contested case hearing; it includes tips for effective public comments, provides links to any available electronic documents, and allows for comments to be submitted online in lieu of submitting comments by mail. A person can also use a link on this website to subscribe to receive email updates when new public notices are listed.

Most notices are also required to be placed in a local newspaper and sent to an interested parties list. Some issuance processes, such as those for general permits, require public notice in at least three newspapers of general circulation in this state and notice to all municipalities, counties, and tribal governments, and opportunity for public hearing. Notices for rulemaking are required to be published in three newspapers, at <https://rules.sd.gov/>, and sent to those on an interested parties list.

The South Dakota Legislature has given the authority to make land use decisions that regulate development to local governments. Many cities and counties have adopted zoning ordinances. See Figure 2 for information on counties with zoning. Issues such as land use and location of proposed or new operations generally go through the local zoning process prior to a permit application being submitted to DANR. Several counties without zoning handle some setback, density, and use limits within their subdivision ordinance (for example Meade and Custer Counties). If requested by local government, DANR staff will provide local government information on our regulatory program requirements and processes.

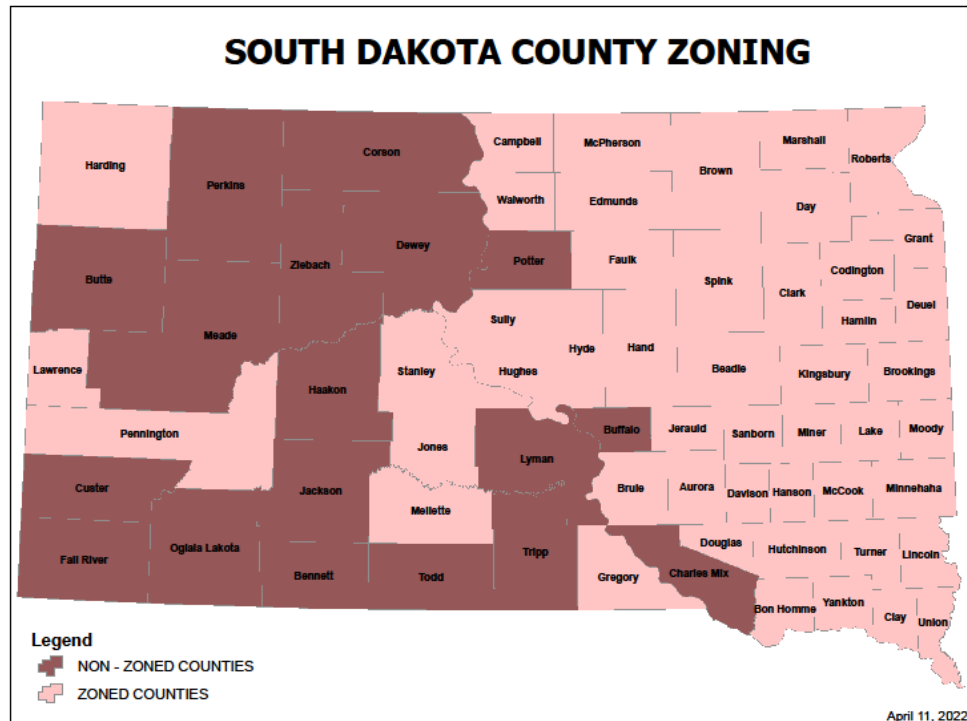


Figure 2. – South Dakota County Zoning Map

Where the department is aware of exceptional interest in a specific permit issuance or reissuance, rulemaking or other activity, the department may go through an informal process prior to the formal issuance/reissuance process. For example: the last two times the General Water Pollution Control Permit for Concentrated Animal Feeding Operations was reissued, the department met with producer groups and explained proposed changes and the issuance process, had a public meeting to provide information on the proposed changes and answer questions, allowed for the submission of informal written comments, and responded in writing to all comments received. A similar process was followed for the reissuance of the General Permit Authorizing Stormwater Discharges Associated with Construction Activities. Following the informal process, the department reissued the general permit following our formal reissuance process and a contested case hearing. Meetings and hearings can be held via Teams, Zoom, or other similar platforms that allow for remote access.

Notices of DANR Citizen Board Meetings and Other Meetings Notices and information on board meetings are found at <https://boardsandcommissions.sd.gov/> and information on contested case hearings are found at <https://danr.sd.gov/public/ContestedCase.aspx>. Notices for meetings and hearings will include the following language, “Individuals requiring assistive technology or other services in order to participate in the meeting/hearing or materials in an alternate format should contact Department of Agriculture and Natural Resources’ Nondiscrimination

Coordinator by calling (605) 773-5559 as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.”

After the request is made, these requests for reasonable accommodation will be passed on to the Nondiscrimination Coordinator as soon as possible but no later than two business days before the hearing. The coordinator will contact the person who requested service to understand the barrier to the individual’s ability to participate in the program or activity and the nature of an accommodation that will remove this barrier, determine the needed service and arrange the needed service, verify with the person who requested service that the needed service will be available. In the unlikely event that the request is denied, the coordinator will provide the individual the reason for the denial. The coordinator will keep and maintain records of the number and type of requests for reasonable accommodations received in a five-year period, the number of such requests that were denied and reason(s) for denial, the number and type of alternate accommodations, if any, that were provided, and a summary of circumstances regarding any denials for federal reports and compliance reviews.

G. Subrecipient Requirements

Any federal financial aid sub-recipient is required to administer its program and activities without regard to race, color, national origin, disability, age, or sex.

Disadvantaged Criteria for Drinking Water State Revolving Fund (SRF) funding and affordability Criteria for Clean Water SRF Funding

The Administrative Rules of South Dakota contain disadvantaged criteria for DANR’s Drinking Water SRF funding and affordability criteria for its Clean Water SRF funding that helps in determining principal forgiveness eligibility (grants) and interest rate reductions for Drinking Water SRF funding. The department also provides points in the scoring criteria for Drinking Water SRF funding for affordability. These are part of the annual Intended Use Plans submitted to EPA each year for the programs.

The Clean Water SRF criteria can be found in the Administrative Rules of South Dakota, ARSD, [Chapter 74:05:08](#), Sections 74:05:08:12.01, 74:05:08:12.02, and 74:05:08:12.03.

The Drinking Water criteria can be found in ARSD, [Chapter 74:05:11](#), Sections 74:05:11:01 (definition of -“Disadvantaged community”), 74:05:11:06 (priority points #2 for affordability), 74:05:11:11.01, 74:05:11:11.02, 74:05:11:18, and 74:05:11:18.01.

Solicitations for Bids/Requests for Proposals/Grant and Loan Agreement and Contract Language

DANR will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all EPA, USDA, DoD, and the DHS Programs regardless of funding source:

"The South Dakota Department of Agriculture and Natural Resources, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat.

252, 42 U.S.C. §§ 2000d to 2000d-4) and other Regulations, hereby notifies all bidders that it will ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, disability, age, or sex in consideration for an award."

The following or similar language will be included in all DANR grant and loan funding agreements:

"The Borrower/recipient does not and shall not in the construction, maintenance and operation of its System discriminate in any way on the basis of race, color, national origin, disability, age, or sex."

The following language will be included in any other DANR contracts:

"During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor"), the contractor does not and shall not discriminate in any way based on race, color, national origin, disability, age, or sex."

H. Publications

DANR will comply with federal requirements for including nondiscrimination statements in all publications that are paid for using federal funds. This language is taken from the Notice of Nondiscrimination:

The South Dakota Department of Agriculture and Natural Resources does not discriminate on the grounds of race, color, national origin, disability, age, or sex in the administration of its programs or activities. A Nondiscrimination Complaint form may be obtained online at www.danr.sd.gov or by calling Brian Pontious, Nondiscrimination Coordinator at (605) 773-5559 or by emailing Brian.Pontious@state.sd.us.

Where funded by the Forest Service, the department will follow the Forest Service's requirements and include the following statement about nondiscrimination and how to file a complaint in publications and outreach materials. This language is as follows:

"In accordance with Federal law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, disability, and reprisal or retaliation for prior civil rights activity. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible State or local Agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information is also available in languages other than English.

To file a complaint alleging discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program intake@usda.gov. This institution is an equal opportunity provider.”

If the publications or materials are too small to permit the use of the full statement, at a minimum the following statement will be included, in print size no smaller than the text: “This institution is an equal opportunity provider.”

Attachment A
DANR's Notice of Nondiscrimination

**South Dakota
Department of Agriculture and Natural Resources
Notice of Nondiscrimination**



The South Dakota Department of Agriculture and Natural Resources does not discriminate on the grounds of race, color, national origin, disability, age, or sex in the administration of its programs or activities. The department does not intimidate or retaliate against any individual or group because they have exercised their right to submit a complaint or testified, assisted, or participated in a discrimination investigation, proceeding or hearing. Complaints of intimidation or retaliation shall be handled the same as those of discrimination.

The department assures full compliance with South Dakota Codified Laws, Chapter 20-13, Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendments Act of 1972; the Age Discrimination Act of 1975; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972; and related laws, regulations and rules in all programs and activities.

If you have any questions about this notice or the department's nondiscrimination program, policies or procedures, you may contact:

Brian Pontious
Nondiscrimination Coordinator
Department of Agriculture and Natural Resources
523 East Capitol Avenue
Pierre, SD 57501-3182
(605) 773-5559
Email: Brian.Pontious@state.sd.us

Any person who believes they have been discriminated against with respect to a DANR program or activity has a right to file a complaint. The written complaint must be filed through our website, by email, in person, or by mail with DANR's Nondiscrimination Coordinator, within 180 days from the date of the alleged discriminatory act or upon notice of the discriminatory act. A Nondiscrimination Complaint form may be obtained online at www.danr.sd.gov or by directly contacting the department's Nondiscrimination Coordinator.

Attachment B
DANR's Discrimination Complaint Procedures

Nondiscrimination Compliant Procedures

If someone believes they have suffered from discrimination under a DANR program, they may contact the DANR Nondiscrimination Coordinator to seek informal resolution. Claims of intimidation and retaliation will be handled promptly and fairly pursuant to these procedures in the same manner as other claims of discrimination. The following steps will be followed to address claims of discrimination:

1. As soon as practical, but within 180 days of the alleged discrimination, complainants may submit a written complaint to the Nondiscrimination Coordinator on DANR's complaint form. DANR's complaint form can be submitted online, in person, and by mail.
2. The Nondiscrimination Coordinator will review the complaint, will provide the complainant a written acknowledgement of the complaint within 10 business days, and may solicit additional information from the complainant as needed. If additional information is requested and not received, the case may be closed. The case may also be closed if the complainant no longer wishes to pursue their case.
3. An internal complaint log will be kept for at least three (3) years by DANR's Nondiscrimination Coordinator containing the name and address of the complainant, nature of the complaint, date of submission and results of the investigation. Information provided to external entities shall not include personally identifiable information.
4. If the complaint is outside the jurisdiction of DANR, the complainant will be notified of the name and contact information for the appropriate agency with jurisdiction, if known.
5. **Complaint Processing:** If the complaint is within the jurisdiction of DANR, it will be promptly investigated. DANR's goal is to address complaints within 60 days of receipt, though the time to carefully investigate complaints may be longer depending on the nature of the complaint and complexity of the issue.
6. **Informal Resolution:** DANR's Nondiscrimination Coordinator will conduct a preliminary inquiry and will work to achieve an informal resolution. The preponderance of evidence standard will be applied to the analysis of the complaint. If the Nondiscrimination Coordinator is able to achieve informal resolution:
 - a) The results of the investigation will be provided to the DANR Secretary or Deputy Secretary for review.
 - b) The complainant will be notified in writing of the results of the investigation and what actions will be/have been taken in response and a timeline to request review.
 - c) Records and investigative files will be kept for a minimum of three (3) years.
7. All complaints that cannot be quickly resolved, within 30 calendar days from the preliminary findings being issued, will be reviewed by a committee consisting of the Secretary of the Department or his or her designee, the Nondiscrimination Coordinator and when applicable the program Administrator involved. The committee will hold an informal hearing with the complainant seeking resolution and will render a decision regarding the complaint within 15 working days of the hearing and to meet the 60-day goal in item #5. The preponderance of evidence standard will be applied to the analysis of the complaint.

8. When the department arrives upon a final decision regarding the complaint filed with the department, it will notify the complainant in writing of the decision regarding whether discrimination was found, a description of the investigation process, and a description of the complainant's rights, if dissatisfied with the decision, to bring the matter to the attention of the appropriate federal agency.
9. The department will advise the complainant of the name and address of the agency and/or individual to contact.
10. If the department knows or has been notified the complainant is dissatisfied, the department will provide the federal agency with a copy of the complaint along with any investigatory report within 90 calendar days of the filing of the complaint.
11. The department will also furnish the federal agency a report indicating final disposition of the complaint within five working days of advising the complainant of the disposition.

The Nondiscrimination Coordinator will maintain the following information. Upon request of the U.S. Environmental Protection Agency (EPA), the United States Department of Agriculture (USDA), the Department of Defense (DoD), and the Department of Homeland Security (DHS), the department will provide the following information to show compliance:

- 1) A brief description of any lawsuits pending against the recipient that allege discrimination;
- 2) Racial/ethnic, national origin, age, sex and handicap data, or EPA Form 4700-4 or equivalent information submitted with the department's grant application;
- 3) A log of discrimination complaints which identifies the complaint, the date it was filed, the date the recipient's investigation was completed, the disposition, and the date of disposition; and
- 4) Reports of any compliance reviews conducted by any other agencies.

Attachment C
DANR's Complaint Form



DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
NONDISCRIMINATION COMPLAINT FORM

The following information is necessary to assist in processing your complaint. Your complaint may be submitted through our website, by email, in person, or by mail. All complaints need to be filed within 180 days of when the last incident occurred. If submitting by mail, please mail the form to the following address:

Brian Pontious
Nondiscrimination Coordinator
South Dakota Department of Agriculture and Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182
Telephone: (605) 773-5559

PLEASE PRINT OR TYPE

1. Complainant's Information:

Name: _____ Daytime phone: _____

Street: _____ Email: _____

City: _____ State: _____ County: _____ Zip Code: _____

2. Person Discriminated Against (if different from Complainant):

Name: _____ Phone: _____

Street: _____ Email: _____

City: _____ State: _____ County: _____ Zip Code: _____

Relationship of the person for whom you are complaining: _____

Confirm you have obtained permission of the aggrieved party if you are filing on behalf of someone else

Yes No

3. Which of the following best describes the discrimination you believe took place?

Race/Color (Specify) _____

Gender (Specify) _____

National Origin (Specify) _____

Age (Specify) _____

Disability (Specify) _____

Other (Specify) _____

4. Name(s) of department employees or programs involved in discrimination.

5. Names and contact information of any witnesses.

6. Explain specific complaint:

Explain in your own words what happened, the date(s) incidents occurred, who was involved, etc. Attach separate sheets of paper if needed.

7. What are you hoping will result from this complaint?

8. Have you filed this complaint with any other federal, state, or local agency, or with any federal or state court? If so, please provide contact information for the agency or court where the complaint was filed.

9. Provide any other information not already provided that you believe would be useful in investigating your complaint.

Signature

Date

DANR Use Only

DANR Date Received: _____ Date Investigated: _____ Date Completed: _____

Results:

DANR Nondiscrimination Coordinator Signature: _____ Date: _____

Attachment D
DANR's Four-Factor Limited English Proficiency Analysis

SOUTH DAKOTA DANR MEANINGFUL ACCESS: FOUR-FACTOR ANALYSIS

This document concerning *Limited English Proficiency* has been prepared to address the **South Dakota Department of Agriculture and Natural Resources' (DANR)** responsibilities as a recipient of federal financial assistance as they relate to the needs of individuals with limited English proficiency language skills. The assessment and strategies have been prepared in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and its implementing regulations, which state that “no person shall be subjected to discrimination on the basis of race, color or national origin”.

Strategies for Providing Meaningful Access

The DANR has developed these strategies to help identify reasonable steps for providing language assistance to persons with limited English proficiency (LEP) who wish to access services provided by the department. LEP persons are those who do not speak English as their primary language and have limited ability to read, speak, write or understand English. This document outlines how to identify a person who may need language assistance, the ways in which assistance may be provided, staff training that may be required, and how to notify LEP persons that assistance is available.

To identify the demand for language assistance, DANR used the four-factor LEP analysis which considers the following factors:

1. The number or proportion of LEP persons in the service area who may be served by DANR.
2. The frequency with which LEP persons contact DANR programs and services.
3. The nature and importance of services provided by DANR to the LEP population.
4. The interpretation services available to DANR and overall cost to provide LEP services. A summary of the results of the four-factor analysis follows:

Population Demographics: Limited English Proficiency; Disability

Data regarding the total South Dakota populations and distribution of LEP and disabled persons was drawn from the 2016-2020 American Community Survey (ACS):

Category	Total	Percent
Total Population in South Dakota	879,336	
Total South Dakota Households	347,878	
Disabled Population		
Population with a Disability ¹	100,958	11.7%
Limited English Proficiency Demographics		
Limited English-Speaking Households ²	4,382	1.3%
Languages:		
Spanish	6,843	0.8%
Other Indo-European Languages	2,957	0.4%
Asian and Pacific Islander Languages	3,342	0.4%
Other Languages	3,968	0.5%
Total:	17,110	2.1%
Population speaking English less than “Very Well”	17,110	2.1%

¹ Disability status from 2020 ACS 5-year estimate. Disability status is determined for the civilian noninstitutionalized population based on six types of difficulty: hearing, vision, cognitive, ambulatory, self-care, and independent living difficulty.

² A “Limited English-speaking household” is one in which no member 14 years old and over (1) speaks only English at home or (2) speaks a language other than English at home and speaks English less than “Very well.”

The frequency with which LEP persons contact DANR programs and services.

DANR staff reviewed the occasions with which the Department may have contact with LEP persons. These instances may include, but are not limited to:

- phone calls or emails
- public meetings
- public notices
- contested case hearings
- training or examination/testing
- inspections
- at the State Fair
- interactions with Tribal or Local Governments
- interactions with federal or state agencies

The State of South Dakota recognizes the need to ensure equal access to electronic and

information technologies for all individuals. The South Dakota Bureau of Information and Telecommunications (BIT) has specific standards for web development design to provide an accessible web presence that enables the public full access to South Dakota government information and services. Understanding that state government has a responsibility to provide online services and information to all citizens and businesses across South Dakota, we continue to make reasonable efforts to accommodate all users by following the [W3C recommendations](#) and the federal government's [Section 508 Standards](#). The accessibility policy is linked on a footer on every page of the department's website. Some department videos are uploaded to YouTube. YouTube not only supports captions, but its player is accessible.

To date, department staff has had very little interaction with LEP individuals. DANR has had no requests in the past five years for interpreters or requests for translated documents. If the Department saw a significant increase in interaction with LEP persons, it will adjust accordingly.

The nature and importance of services provided by DANR to the LEP Population.

There is no large geographic concentration of any type of LEP individuals in the State of South Dakota. The overwhelming majority of the population, **93.5%**, is five (5) years or older and speaks only English. As a result, the DANR does not have many services directed towards the LEP population. The department's goal is to see that LEP persons are provided meaningful access and treated fairly in all the areas mentioned above. The DANR's Nondiscrimination Coordinator strives to educate staff on their duties toward LEP individuals through Title VI training.

As noted above, the State of South Dakota has a very small LEP population. Accordingly, the DANR does not have an extensive collection of resources available for LEP. However, DANR does maintain the tools necessary to provide meaningful access to LEP individuals when the needs arise. Currently, the DANR uses services under a contract from the South Dakota Office of Procurement Management. The current service provides translation of documents, over the phone translators, and video remote interpretation for over 150 languages. This system provides DANR with a cost-effective way to communicate with LEP individuals when needed. For a longer scheduled hearing, DANR could obtain services under a separate contract.

On rare occasions, when DANR staff suspect a group of LEP may be affected, DANR may have any documents, flyers, agendas, and meeting notices, including those for a board meeting, contested case hearings or training or testing translated and share publicly in the same manner as the corresponding English item. If a need is determined, the DANR will provide additional language assistance resources. Until then, the Department will continue to use the existing tools at its disposal to make certain no one is excluded or discriminated against.

LANGUAGE ASSISTANCE

A person who does not speak English as their primary language and who has a limited ability to read, write, speak or understand English may be a Limited English Proficient person and may be entitled to language assistance with respect to DANR services. Language assistance can include interpretation, which means oral or spoken transfer of a message from one language into another language and/or translation, which means the written transfer of a message from one language into another language.

DANR staff can identify an LEP person who needs language assistance by:

- Occasionally posting ads and distribute flyers to inform LEP individuals about translation and interpretation services available in languages they understand.
- Using language identification cards to assist in identifying the language interpretation needed if the occasion arises.
- Cards can be located at: <https://www.lep.gov/translation#toc-language-identification-and-i-speak-cards> when the DANR sponsors an informational meeting or event, a staff person may greet participants as they arrive. By informally engaging participants in conversation, it is possible to gauge each attendee's ability to speak and understand English. Although translation may not be provided at the event, it will help identify the need for future events.

Language Assistance Measures

There is a very low percentage of LEP individuals in the DANR service area. When there are persons who speak English less than "very well" or "not at all" DANR will strive to offer the following measures:

1. The DANR staff will take reasonable steps to provide the opportunity for meaningful access to LEP individuals who have difficulty communicating in English.
2. The following resources may be obtained by all staff to accommodate LEP persons:
 - Language interpretation, including qualified American sign language interpreter services, and translation services will be available through Corporate Translation Services, Inc. dba Language Link. by contacting the department's Nondiscrimination Coordinator or other staff.
 - Language cards are readily available at the <https://www.lep.gov/translation#toc-language-identification-and-i-speak-cards>

STAFF TRAINING

The following training will be provided to all staff:

- Information on the Nondiscrimination Policy and LEP responsibilities.
- Description of language assistance services offered to the public.

- Use of interpreter service provider's language identification cards.
- Documenting how to handle language assistance requests.
- How to handle a potential discrimination complaint.

TRANSLATION OF DOCUMENTS

Due to the very small LEP population, translation resources have been identified, but the need for them are limited in South Dakota. When staff prepares a document or schedules a meeting for which the target audience is expected to include LEP individuals, documents, meeting notices, flyers, and agendas will be printed in an alternative language based on the known LEP population.

MONITORING

DANR will reassess its strategies for providing meaningful access for LEP individuals if any immediate or apparent demographic shift occurs, which requires further resources to be made available. This reassessment will review:

- The number of documented LEP person contacts encountered annually.
- How the needs of LEP persons have been addressed.
- The current LEP population in the State.
- Determination as to whether the need for translation services has changed.
- Determine whether complaints have been received concerning the Department's failure to meet the needs of LEP individuals.

Environmental Justice

Presidential Executive Order 12898, issued in 1994, directed every federal agency or one using federal funds to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on minority populations and low-income populations. The U.S. EPA defines the following terms that apply to Environmental Justice through policy. These U.S. EPA definitions are also being used by other federal agencies.

Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies.

Fair treatment means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies.

Meaningful involvement means:

People have an opportunity to participate in decisions about activities that may affect their environment and/or health.

- The public's contribution can influence the regulatory agency's decision.
- Community concerns will be considered in the decision-making process; and

- Decision makers will seek out and facilitate the involvement of those potentially affected.

Title VI of the Civil Rights Act prohibits discrimination based on race, color, national origin, disability, age, or sex. The Environmental Justice Executive Order continues to protect these groups, but expands it umbrella to include low-income populations.

Minority and Low-Income Populations

To assess the impacts of DANR programs and activities on minority and low-income populations, the existence of a population needs to be identified. The 2020 Census data was used to identify the two environmental justice maps. The method of mapping used to understand the location and concentration of the population was the percent of minority population in a county compared to the total population in the county and an Economically Distressed Area Map. Using both maps together gives a better understanding of the concentration and location of the environmental justice populations in South Dakota. For statewide analysis, the percent of environmental justice population per county is the most appropriate measure to use because it allows us to compare the relative impacts on the environmental justice population. Figure 3 shows the percent of minorities per county. Figure 4 shows the Economically Distressed Counties. In addition to using the Figure 3 and 4 maps, department staff may also refer to EPA's EJ Screen Tool and the Council on Environmental Quality's Climate and Economic Justice Screening Tool.

Figure 3

Percentage of Minority Population in South Dakota Counties

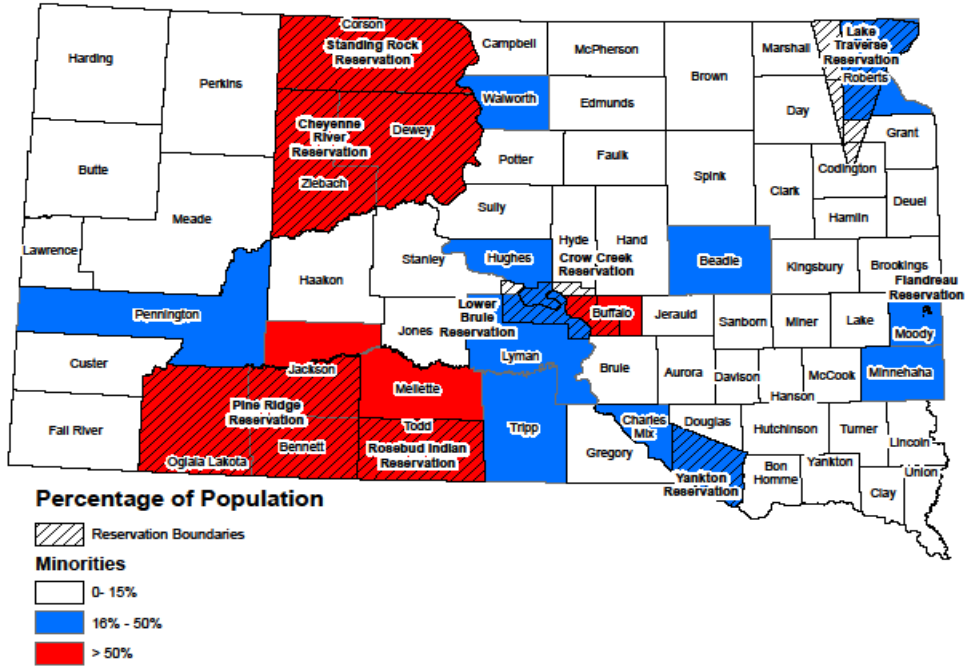
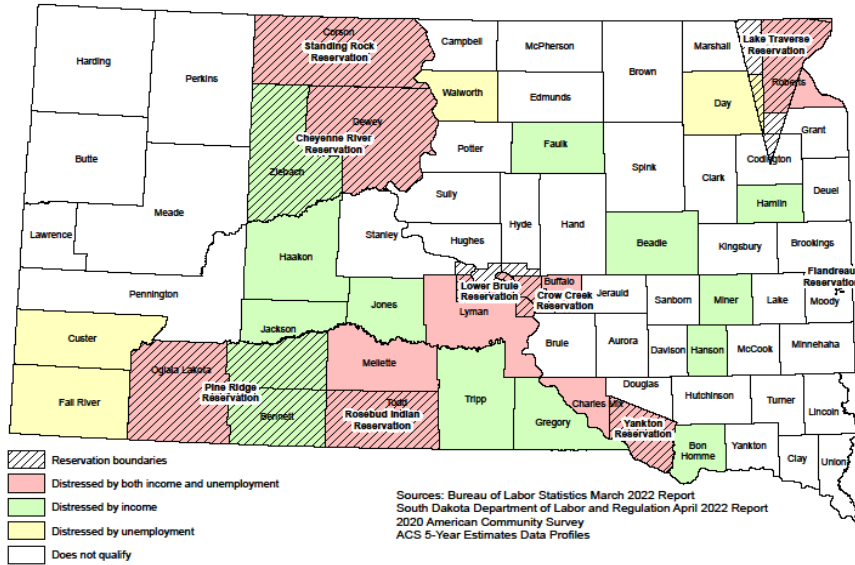


Figure 4

Source: US Census 2020

Economically Distressed Counties in South Dakota

Counties with an unemployment rate at least 1% greater than the national average for the most recent 24-month period or per capita income less than 80% the national average.



Minority Populations

The 2020 census data shows that:

- Minority population is 21 percent of the total population in South Dakota.
- There are nine tribal governments in South Dakota. The greatest percentage of minority population in South Dakota is in the counties where the Indian Reservations, tribal trust lands and tribal headquarters are located. The Native American population in South Dakota is 91,221 people or 10.4 percent of the total population of the state, which accounts for 49 percent of the total minority population.
- Of the total Native American population in South Dakota approximately 50 percent live in Indian Reservation counties. In Minnehaha County, which is in the Sioux Falls Metropolitan Planning Area, the percent of minority population was 21.3 percent, which accounts for 22.1 percent of the total South Dakota minority population.
- In Pennington County, which is in the Rapid City Metropolitan Planning Area, the percent of minority population was 24 percent, which accounts for 15 percent of the total South Dakota minority population.
- Out of the total minority population in South Dakota Approximately 37 percent of South Dakota's minority population live in the counties where Sioux Falls and Rapid City, the state's largest cities, are located.
- Approximately 62 percent of the minority population in South Dakota either lives on an Indian reservation, a tribal headquarters county; or in the counties where Sioux Falls and Rapid City are located.

Low-Income Populations

The DANR uses the 'Economically Distressed Area Map' to identify low-income areas:

- Most of the Economically Distressed areas identified in Figure 4 are the counties where the Indian reservations are located.
- The Minority Population Map and Economically Distressed Area Map are very similar.

Many of the areas of South Dakota that have a high minority population, are economically distressed, or both are in Indian country where EPA retains responsibilities for EPA programs. The U.S. Environmental Protection Agency has indicated that delegation or any other authorization to implement EPA programs to the State of South Dakota does not extend to Indian country as defined in 18 U.S.C. Section 1151. Indian country in South Dakota generally includes (1) lands within the exterior boundaries of the following Indian reservations located within South Dakota: the Cheyenne River Reservation, the Crow Creek Reservation, the Flandreau Indian Reservation, the Lower Brule Reservation, the Pine Ridge Reservation, the Rosebud Indian Reservation, the Standing Rock Reservation, and the Yankton Reservation (subject to federal court decisions removing lands from Indian country status within the Yankton Reservation); (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151. DANR, along with the South Dakota Attorney General's Office, objects to EPA's decision to exclude "[a]ny land held in trust by the

United States for an Indian Tribe" from South Dakota's delegation, authorization, and DANR's performance partnership grant. We also object and disagree with the legal basis that EPA has used to justify its position on this matter.

There is no federal law governing environmental justice (EJ). This means that agencies, including EPA and DANR, have no authority to mandate actions or remedies addressing EJ concerns independent of their authorities under other statutes. DANR is committed to involving members of the public throughout the state in the development and implementation of its programs, activities, and services. DANR is voluntarily committing to, on a case-by-case basis, evaluating the need for additional public participation actions in EJ areas.