

SENATOR STEVE DAINES (MT)

PROTECT COLLABORATION FOR HEALTHIER FORESTS ACT

Frequently Asked Questions

“Combatting chronic litigation doesn’t erode public input, it safeguards it. It does so by ensuring that consensus-driven decisions of the majority are not obstructed by isolated dissenters.” – U.S. Senator Steve Daines

The *Protect Collaboration for Healthier Forests Act* (S. 2160) establishes a pilot program to resolve disputes against forest management projects on National Forest System land through arbitration rather than the courtroom. S. 2160, as modified by the Substitute Amendment, authorizes a program to pilot arbitration in the states of Montana, Idaho and Wyoming.

What are the benefits of arbitration?

Arbitration is a method of Alternative Dispute Resolution that resolves a dispute between parties through the use of an impartial, third party arbitrator. Arbitration provides faster and less costly resolution to disputes as compared to litigation.

Is arbitration a valid process for resolving disputes?

Similar to a trial, arbitration involves disputing parties who present evidence and arguments before qualified arbitrator who renders a decision. In S. 2160, the arbitrator’s decision is binding and can be enforced by a court.

What are the qualifications of arbitrators?

Arbitrators serve impartially and independent from the disputing parties and ensure the integrity and fairness of the arbitration process. S. 2160 requires arbitrators to be recognized by the American Arbitration Association or a State arbitration program. A fully retired Federal or State judge can also serve as an arbitrator under S. 2160.

Why does S. 2160 pilot arbitration in certain areas of the country?

National Forests in the Northern Rockies’ states, including Montana, Idaho and Wyoming, experience a high level of projects litigated. For instance, there are 28 timber sales under litigation in Montana—21 of which are enjoined, preventing work on over 17,000 acres. The high level of litigation leads to increased agency costs and forgone or delayed work. A pilot arbitration program in these states will test whether disputes can be resolved more quickly and at less cost to the taxpayer.

What types of projects are eligible for arbitration?

Projects eligible for arbitration are limited to those that are collaboratively developed, reduce hazardous fuels or reduce the risk of insect and disease infestations, and are located in the Wildland Urban Interface.

How many projects will be piloted?

The Forest Service will designate two projects per calendar year that, if disputed, will be eligible for arbitration under the pilot authority. A total of 10 projects under dispute will be resolved during the five year pilot authority. The Forest Service will be responsible for the professional fees of arbitrators participating in the program.

Will litigation remain a remedy to resolve disputes for projects?

Arbitration will serve as the exclusive dispute resolution process for projects designated under the pilot authority. Projects under the pilot authority will not be subject to judicial review.

Who can file disputes in arbitration proceedings under S. 2160?

For an eligible project designated by the Forest Service, arbitration is available to individuals or entities who have exhausted the administrative review process (for projects requiring an EA/EIS under NEPA). In the case of an eligible project that is categorically excluded from NEPA, arbitration is available to those who have participated in the collaborative process to develop the project.

How does arbitration work in S. 2160?

When settling disputes under S. 2160, the arbitrator decides whether to select the project as approved by the Forest Service or the alternative proposal submitted by the disputing party(ies). The arbitrator can also decide to reject both options, which effectively would result in the FS having to revise or withdraw the project.