

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

S. 2160

To establish a pilot program under which the Chief of the Forest Service may use alternative dispute resolution in lieu of judicial review for certain projects.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. DAINES

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protect Collaboration
5 for Healthier Forests Act”.

6 **SEC. 2. ALTERNATIVE DISPUTE RESOLUTION PILOT PRO-**
7 **GRAM.**

8 (a) DEFINITIONS.—In this Act:

9 (1) ARBITRATOR.—The term “arbitrator”
10 means a person—

1 (A) selected by the Secretary under sub-
2 section (d)(1); and

3 (B) that meets the qualifications under
4 subsection (d)(2).

5 (2) LAND AND RESOURCE MANAGEMENT
6 PLAN.—The term “land and resource management
7 plan” means a plan developed under section 6 of the
8 Forest and Rangeland Renewable Resources Plan-
9 ning Act of 1974 (16 U.S.C. 1604).

10 (3) PARTICIPANT.—The term “participant”
11 means an individual or entity that, with respect to
12 a project—

13 (A) has exhausted the administrative re-
14 view process under part 218 of title 36, Code
15 of Federal Regulations (or successor regula-
16 tions); or

17 (B) in the case of a project that is cat-
18 egorically excluded for purposes of the National
19 Environmental Policy Act of 1969 (42 U.S.C.
20 4321 et seq.), has participated in a collabo-
21 rative process under clause (i) or (ii) of sub-
22 section (c)(1)(A).

23 (4) PILOT PROGRAM.—The term “pilot pro-
24 gram” means the pilot program implemented under
25 subsection (b)(1).

1 (5) PROJECT.—The term “project” means a
2 project described in subsection (c).

3 (6) SECRETARY.—The term “Secretary” means
4 the Secretary of Agriculture, acting through the
5 Chief of the Forest Service.

6 (b) ARBITRATION PILOT PROGRAM.—

7 (1) IN GENERAL.—Not later than 2 years after
8 the date of enactment of this Act, the Secretary
9 shall issue a final rule to implement an arbitration
10 pilot program, to be carried out in the States of
11 Idaho, Montana, and Wyoming, as an alternative
12 dispute resolution in lieu of judicial review for
13 projects described in subsection (c).

14 (2) LIMITATION ON NUMBER OF PROJECTS.—

15 (A) IN GENERAL.—The Secretary may not
16 designate for arbitration under the pilot pro-
17 gram more than 2 projects per calendar year.

18 (B) EXCEPTION.—If the Secretary des-
19 ignates a project for arbitration under the pilot
20 program, and no participant initiates arbitra-
21 tion under subsection (e)(2), that project shall
22 not count against the limitation on the number
23 of projects under subparagraph (A).

24 (3) APPLICABLE PROCESS.—Except as other-
25 wise provided in this Act, the pilot program shall be

1 carried out in accordance with subchapter IV of
2 chapter 5 of title 5, United States Code.

3 (4) EXCLUSIVE MEANS OF REVIEW.—The alter-
4 native dispute resolution process under the pilot pro-
5 gram for a project designated for arbitration under
6 the pilot program shall be the exclusive means of re-
7 view for the project.

8 (5) NO JUDICIAL REVIEW.—A project that the
9 Secretary has designated for arbitration under the
10 pilot program shall not be subject to judicial review.

11 (c) DESCRIPTION OF PROJECTS.—

12 (1) IN GENERAL.—The Secretary, at the sole
13 discretion of the Secretary, may designate for arbi-
14 tration projects that—

15 (A)(i) are developed through a collabo-
16 rative process (within the meaning of section
17 603(b)(1)(C) of the Healthy Forest Restoration
18 Act of 2003 (16 U.S.C. 6591b(b)(1)(C)));

19 (ii) are carried out under the Collaborative
20 Forest Landscape Restoration Program estab-
21 lished under section 4003 of the Omnibus Pub-
22 lic Land Management Act of 2009 (16 U.S.C.
23 7303); or

24 (iii) are identified in a community wildfire
25 protection plan (as defined in section 101 of the

1 Healthy Forests Restoration Act of 2003 (16
2 U.S.C. 6511));

3 (B) have as a purpose—

4 (i) reducing hazardous fuels; or

5 (ii) reducing the risk of, or mitigating,
6 insect or disease infestation; and

7 (C) are located, in whole or in part, in a
8 wildland-urban interface (as defined in section
9 101 of the Healthy Forests Restoration Act of
10 2003 (16 U.S.C. 6511)).

11 (2) INCLUSION.—In designating projects for ar-
12 bitration, the Secretary may include projects that
13 are categorically excluded for purposes of the Na-
14 tional Environmental Policy Act of 1969 (42 U.S.C.
15 4321 et seq.).

16 (d) ARBITRATORS.—

17 (1) IN GENERAL.—The Secretary shall develop
18 and publish a list of not fewer than 15 individuals
19 eligible to serve as arbitrators for the pilot program.

20 (2) QUALIFICATIONS.—To be eligible to serve
21 as an arbitrator under this subsection, an individual
22 shall be—

23 (A) recognized by—

24 (i) the American Arbitration Associa-
25 tion; or

- 1 (ii) a State arbitration program; or
2 (B) a fully retired Federal or State judge.

3 (e) INITIATION OF ARBITRATION.—

4 (1) IN GENERAL.—Not later than 7 days after
5 the date on which the Secretary issues the applicable
6 decision notice or decision memo with respect to a
7 project, the Secretary shall—

8 (A) notify each applicable participant and
9 the Clerk of the United States District Court
10 for the district in which the project is located
11 that the project has been designated for arbi-
12 tration under the pilot program; and

13 (B) include in the applicable decision no-
14 tice or decision memo a statement that the
15 project has been designated for arbitration.

16 (2) INITIATION.—

17 (A) IN GENERAL.—A participant that has
18 received a notification under paragraph (1) and
19 is seeking to initiate arbitration for the applica-
20 ble project under the pilot program shall file a
21 request for arbitration with the Secretary not
22 later than 30 days after the date of receipt of
23 the notification.

1 (ii) the applicable court shall compel
2 arbitration in accordance with this Act.

3 (B) FEES AND COSTS.—For any motion
4 described in subparagraph (A) for which the
5 Secretary is the prevailing party, the applicable
6 court shall award to the Secretary—

7 (i) full or partial court costs; and

8 (ii) full or partial attorney's fees.

9 (f) SELECTION OF ARBITRATOR.—For each arbitra-
10 tion initiated under this Act—

11 (1) each applicable participant shall propose 2
12 arbitrators; and

13 (2) the Secretary shall select 1 arbitrator from
14 the list of arbitrators proposed under paragraph (1).

15 (g) RESPONSIBILITIES OF ARBITRATOR.—

16 (1) IN GENERAL.—An arbitrator—

17 (A) shall address all claims or modifica-
18 tions sought by each party seeking arbitration
19 with respect to a project under this Act; but

20 (B) may consolidate into a single arbitra-
21 tion all requests to initiate arbitration by all
22 participants with respect to a project.

23 (2) CONSIDERATION OF PROPOSED PROJECTS
24 AND DECISION.—For each project for which arbitra-
25 tion has been initiated under this Act, the arbitrator

1 shall make a decision with respect to the project
2 by—

3 (A) selecting the project, as approved by
4 the Secretary;

5 (B) selecting the alternative proposal sub-
6 mitted by the applicable participant in the re-
7 quest for initiation of arbitration for the project
8 filed under subsection (e)(2)(A); or

9 (C) rejecting both options described in sub-
10 paragraphs (A) and (B).

11 (3) CONVENE HEARINGS.—In carrying out
12 paragraph (2), the arbitrator may convene the Sec-
13 retary and the participant, including by telephone
14 conference or other electronic means to consider—

15 (A) the administrative record;

16 (B) arguments and evidence submitted by
17 the Secretary and the participant;

18 (C) the project, as approved by the Sec-
19 retary; and

20 (D) the alternative proposal submitted by
21 the applicable participant in the request for ini-
22 tiation of arbitration for the project filed under
23 subsection (e)(2)(A).

24 (4) LIMITATIONS.—An arbitrator may not mod-
25 ify any project or alternative proposal contained in

1 a request for initiation of arbitration of a participant
2 under this Act.

3 (h) INTERVENTION.—A party may intervene in an ar-
4 bitration under this Act if, with respect to the project to
5 which the arbitration relates, the party—

6 (1) meets the requirements of Rule 24(a) of the
7 Federal Rules of Civil Procedure (or a successor
8 rule); or

9 (2) participated in the applicable collaborative
10 process referred to in clause (i) or (ii) of subsection
11 (c)(1)(A).

12 (i) SCOPE OF REVIEW.—In carrying out arbitration
13 for a project, the arbitrator shall set aside the agency ac-
14 tion, findings, and conclusions found to be arbitrary, ca-
15 pricious, an abuse of discretion, or otherwise not in ac-
16 cordance with law, within the meaning of section
17 706(2)(A) of title 5, United States Code.

18 (j) DEADLINE FOR COMPLETION OF ARBITRATION.—
19 Not later than 90 days after the date on which arbitration
20 is initiated for a project under the pilot program, the arbi-
21 trator shall make a decision with respect to all claims or
22 modifications sought by the participant that initiated the
23 arbitration.

24 (k) EFFECT OF ARBITRATION DECISION.—A decision
25 of an arbitrator under this Act—

1 (1) shall not be considered to be a major Fed-
2 eral action;

3 (2) shall be binding; and

4 (3) shall not be subject to judicial review, ex-
5 cept as provided in section 10(a) of title 9, United
6 States Code.

7 (l) ADMINISTRATIVE COSTS.—

8 (1) IN GENERAL.—The Secretary shall—

9 (A) be solely responsible for the profes-
10 sional fees of arbitrators participating in the
11 pilot program; and

12 (B) use funds made available to the Sec-
13 retary and not otherwise obligated to carry out
14 subparagraph (A).

15 (2) TRAVEL COSTS.—The Secretary—

16 (A) shall be solely responsible for reason-
17 able travel costs associated with the participa-
18 tion of an arbitrator in any meeting conducted
19 under subsection (g)(3); and

20 (B) shall not be responsible for the travel
21 costs of a participant under subsection (g)(3).

22 (3) ATTORNEY'S FEES.—No arbitrator may
23 award attorney's fees in any arbitration brought
24 under this Act.

25 (m) REPORTS.—

1 (1) IN GENERAL.—Not later than 2 years after
2 the date on which the Secretary issues a final rule
3 to implement the pilot program under subsection
4 (b)(1), the Secretary shall submit to the Committee
5 on Agriculture, Nutrition, and Forestry and the
6 Committee on Energy and Natural Resources of the
7 Senate and the Committee on Natural Resources of
8 the House of Representatives, and publish on the
9 website of the Forest Service, a report describing the
10 implementation of the pilot program, including—

11 (A) the reasons for selecting certain
12 projects for arbitration;

13 (B) an evaluation of the arbitration proc-
14 ess, including any recommendations for im-
15 provements to the process;

16 (C) a description of the outcome of each
17 arbitration; and

18 (D) a summary of the impacts of each out-
19 come described in subparagraph (C) on the
20 timeline for implementation and completion of
21 the applicable project.

22 (2) GAO REVIEWS AND REPORTS.—

23 (A) REVIEW ON TERMINATION.—On termi-
24 nation of the pilot program under subsection
25 (n), the Comptroller General of the United

1 States shall review the implementation by the
2 Secretary of the pilot program, including—

3 (i) the reasons for selecting certain
4 projects for arbitration under the pilot pro-
5 gram;

6 (ii) the location and types of projects
7 that were arbitrated under the pilot pro-
8 gram;

9 (iii) a description of the outcomes of
10 the projects that were arbitrated under the
11 pilot program;

12 (iv) a description of the participants
13 who initiated arbitration under the pilot
14 program;

15 (v) a description and survey of the ar-
16 bitrators who participated in the pilot pro-
17 gram;

18 (vi) the type and outcome of any re-
19 quests for judicial review with respect to a
20 project that the Secretary designated for
21 arbitration under the pilot program; and

22 (vii) any other items the Comptroller
23 General of the United States may find ap-
24 plicable for evaluating the pilot program.

1 (B) REPORT.—After completion of the re-
2 view described in subparagraph (A) and not
3 later than 1 year after termination of the pilot
4 program under subsection (n), the Comptroller
5 General of the United States shall submit to
6 the Committee on Agriculture, Nutrition, and
7 Forestry and the Committee on Energy and
8 Natural Resources of the Senate and the Com-
9 mittee on Natural Resources of the House of
10 Representatives a report, describing the results
11 of the applicable review.

12 (n) TERMINATION.—The Secretary may not des-
13 ignate a project for arbitration under the pilot program
14 on or after the date that is 5 years after the date on which
15 the Secretary issues a final rule to implement the pilot
16 program under subsection (b)(1).

17 (o) EFFECT.—Nothing in this Act affects the respon-
18 sibility of the Secretary to comply with—

19 (1) the Endangered Species Act of 1973 (16
20 U.S.C. 1531 et seq.);

21 (2) the National Environmental Policy Act of
22 1969 (42 U.S.C. 4321 et seq.); or

23 (3) other applicable laws.