

Taylor, Bob (Thune)

From: [REDACTED]
Sent: Tuesday, June 21, 2005 4:26 PM
To: Taylor, Bob (Thune)
Cc: [REDACTED]
Subject: RBTI B-1 training Fifth Circuit Decision
Follow Up Flag: Follow up
Flag Status: Red
Attachments: 02-60288.0.wpd.pdf; 02-60288.2.wpd.pdf; ROD.pdf

Dear Mr. Taylor:

[REDACTED] of the Davis Mountains Trans-Pecos Heritage Association asked that I forward to you some materials concerning the unanimous panel decision of the Fifth Circuit this past October to vacate the Record of Decision for the Realistic Bomber Training Initiative in West Texas. The RBTI was proposed to serve, among other things, B-1 bomber training from Dyess Air Force Base. That court decision is attached (first attachment), together with the court's later January 31, 2005 Order on Petitions for Rehearing (second attachment) which provided that during the interim period of the preparation of a supplemental environmental impact statement for RBTI, the Air Force could continue to operate RBTI pursuant to operating conditions to be determined by the district court. The issue of operating conditions has been briefed to the district court but no decision on those conditions has yet issued. Mr. [REDACTED] indicated that these materials might be of interest to Sen. Thune for upcoming hearings on base closure or realignment decisions affecting South Dakota. I and my firm represent the DMTPHA organization in this litigation.

As presently understood by DMTPHA, the Air Force lacks a valid record of decision and environmental impact statement to support B-1 and other training using the RBTI training route and military operations area. Not only did the Fifth Circuit vacate the Air Force decisions approving RBTI, it also vacated the FAA approvals of the airspace needed for RBTI. Thus, at present, the Air Force lacks validly approved military airspace to conduct its B-1 and other training operations using RBTI. We understand that the Air Force nevertheless may be presently conducting these operations, although it is not clear on what authority they are relying or whether they have modified their operations to conform with generally applicable FAA requirements in the absence of approved military airspace (such as speed and overflight frequency requirements).

The third attachment is the Air Force's RBTI Record of Decision that was vacated by the Fifth Circuit's decision. The Air Force is required by that court decision to issue a new ROD on remand. Finally, a link to the ROD and the entire RBTI final environmental impact statement (the one that the Fifth Circuit held was inadequate under the National Environmental Policy Act) is <http://www.cevp.com/docs/Rbti/contents.html>.

If you have any questions about these items, please let me know. I will be out of the office on Wednesday June 22, but back in on Thursday June 23.

[REDACTED]

7/20/2006