

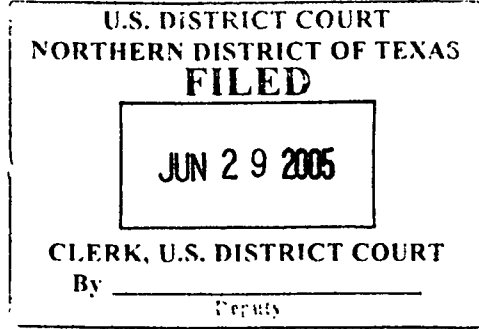
Taylor, Bob (Thune)

From: Taylor, Bob (Thune)
Sent: Wednesday, July 13, 2005 5:31 PM
To: 'Beauchamp Arthur Lt. Col AF/ILGM'
Subject: RBTI Litigation Documents - 2
Attachments: DeCuir1_d.pdf; addl_DeC.pdf; 02-60288 0 wpd.pdf; 02-60288 2 wpd.pdf; Order operating cond dct.pdf

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

DAVIS MOUNTAINS TRANS-PECOS)
HERITAGE ASSOCIATION, et al.,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES AIR FORCE, et al.,)
)
Defendants.)

Civil Action No.
5:01-CV-289-C



ORDER

On this date the Court considered:

- (1) Plaintiffs' (DMTPHA) Motion and Brief for Hearing on Operating Conditions for RBTI Pending Completion of SEIS and Issuance of Agency Decisions on Remand, filed April 21, 2005, by Davis Mountains Trans-Pecos Heritage Association, *et al.* ("Plaintiffs");
- (2) Defendants' Opposition and Brief in Response to Plaintiffs' Motion for Post-remand Hearing, filed May 11, 2005, by the United States Air Force, *et al.* ("Defendants");
- (3) Plaintiffs' (DMTPHA) Brief Addressing Operating Conditions for RBTI Pending Completion of SEIS and Issuance of Agency Decisions on Remand, filed March 9, 2005;

- (4) Defendants' Corrected Brief on Remand, filed April 27, 2005;¹
- (5) Plaintiffs' (DMTPHA) Reply Brief Addressing Operating Conditions for RBTI Pending Completion of SEIS and Issuance of Agency Decisions on Remand, filed April 15, 2005; and
- (6) Defendants' Post-Remand Reply Brief, filed April 15, 2005.

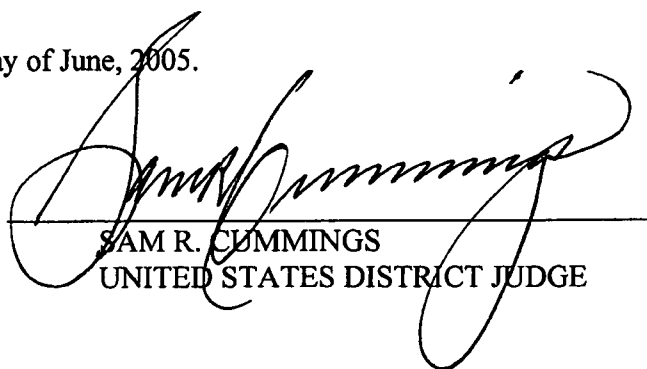
After considering all the relevant arguments and evidence, this Court finds as follows:

- (1) Plaintiffs' Motion for Hearing on Operating Conditions for RBTI Pending Completion of SEIS and Issuance of Agency Decisions on Remand is **DENIED** for the reason that adequate briefing on the issues has been completed by the parties;
- (2) The Fifth Circuit Court of Appeals Order issued January 31, 2005 On Petition for Rehearing allowed the operation of the RBTI to continue pending the outcome of the supplemental environmental impact statement. The Fifth Circuit directed this Court to set the conditions under which the RBTI may continue;
- (3) On January 12, 2005, the Air Force issued Flight Control Information File A05-01 ("FCIF A05-01"), titled "IR-178 and LANCER MOA Procedures," to Air Combat Command, Air National Guard, and Air Force Reserve Command units;

¹Defendants filed Defendants' Brief on Remand on March 10, 2005. Defendants filed their Corrected Brief on Remand because the declarations and exhibits filed in support of Defendants' post-remand brief did not conform to the appendix requirement of Local Rule 7.1(i).

- (4) FCIF A05-01 directs the following restrictions to be in effect until further notice: (a) Aircrews utilizing IR-178 will fly no lower than 500 ft. AGL, AP/1B altitude, or minimum altitudes set by the controlling airspace manager, whichever is higher, and (b) Aircrews utilizing the LANCER MOA will fly no lower than 12,000 MSL;
- (5) The RBTI may continue as previously conducted with the addition of the FCIF A05-01 restrictions, pending the completion of SEIS and issuance of agency decisions on remand;
- (6) The restrictions addressed by FCIF A05-01 adequately address the relevant issues until such time as the SEIS and agency decisions are completed; and
- (7) The RBTI is otherwise unchanged pending the SEIS and agency decisions on remand.

SO ORDERED this 29th day of June, 2005.



SAM R. CUMMINGS
UNITED STATES DISTRICT JUDGE

January 31, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 02-60288

DAVIS MOUNTAINS TRANS-PECOS HERITAGE
ASSOCIATION, a Texas non-profit corporation,

Petitioner,

versus

FEDERAL AVIATION ADMINISTRATION;
MARION C. BLAKEY, Administrator, FEDERAL
AVIATION ADMINISTRATION; NORMAN Y.
MINETA, SECRETARY, DEPARTMENT OF
TRANSPORTATION,

Respondents.

No. 03-10506

DAVIS MOUNTAINS TRANS-PECOS HERITAGE
ASSOCIATION; DALE TOONE; SUSAN TOONE;
TIM LEARY; REXANN LEARY; EARL BAKER;
SYLVIA BAKER; MARK DAUGHERTY; ANN
DAUGHERTY; DICK R. HOLLAND; J. P. BRYAN;
JACKSON BEN LOVE, JR.; KAARE J. REEME,

Plaintiffs-Appellants,

versus

UNITED STATES AIR FORCE; JAMES G. ROCHE;
Secretary United States Air Force; UNITED STATES
DEPARTMENT OF DEFENSE; DONALD H. RUMSFIELD,
Secretary of Defense,

Defendants-Appellees.

No. 03-10528

BUSTER WELCH; JOHN F. OUDT; LESA OUDT;
JOHN DIRK OUDT; CINDY ANN SPIRES, ET AL,

Plaintiffs-Appellants,

versus

UNITED STATES AIR FORCE; F. WHITTEN
PETERS, Secretary of the United States Air Force;
WENDELL L. GRIFFIN, Colonel, Commander,
7th Bomb Wing, Dyess Holloman Air Force Base;
CURTIS M. BEDKE, Brigadier General, Commander,
2nd Bomb Wing, Barksdale Air Force Base; UNITED
STATES DEPARTMENT OF DEFENSE; DONALD H.
RUMSFIELD, SECRETARY DEPARTMENT OF
DEFENSE,

Defendants-Appellees.

Petitions for Review of an Order

ON PETITIONS FOR REHEARING

Before REAVLEY, JONES and DENNIS, Circuit Judges.

PER CURIAM: *

The petition for rehearing of The Air force is granted to this extent: The operation of the Realistic Bomber Training Initiative may continue pending outcome of the supplemental environmental impact statement under conditions of operation set by the district court. The case is remanded to that court for that purpose.

The petitions for rehearing are otherwise denied.

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.