COMMITTES
ARMED SERVICES
ENVIRONMENT & PUBLIC WORKS
SMALL BUSINESS
VETERANS' AFFAIRS

United States Senate

WASHINGTON, DC 20510

August 16, 2005

The Honorable Anthony J. Principi Chairman Base Realignment and Closure Commission 2521 Clark Street, Suite 600 Arlington, VA 22202

Dear Chairman Principi:

In my letter of August 9, 2005, I raised a serious concern regarding the Air Force's incorrect responses to commission questions about the five years of continuous litigation that has already resulted in a negative impact on current B-1 training conducted from Dyess AFB, and that future litigation could threaten to further constrain or eliminate access to that base's primary training area. I raised this issue because it represents a very current and visible example of just one reason why the consolidation of all 67 B-1s at Dyess will result in additional cost, reduced operational readiness and constrained training quality and availability. The Air Force, on the other hand, has attempted to down-play the impact of this litigation, even implying to the commission that the court imposed altitude limitation (500 ft in IR-178) was their preferred low-level flying altitude and that the litigation was essentially all behind them.

Accordingly, I wish to inform the commission that I have been made aware that one plaintiffs group involved in this litigation has filed a Notice of Appeal, dated August 11, 2005, in the Federal District Court. A second plaintiffs group is expected to file their appeal this week. It is my understanding that, notwithstanding their victory in the 5th Circuit in October 2004 effectively vacating FAA approval and the Air Force Record of Decision and Environmental Impact Statement (EIS), they now seek to impose even greater court-imposed interim flying restrictions in the disputed training areas (imposing a 1,000 ft floor in IR-178).

I bring this to your attention only to eliminate any doubt as to whether this litigation will continue into the future. It is now an indisputable fact.

Thank you for your consideration, and for your service and leadership on the commission.

Respectfully yours,

John Thune U.S. Senator

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

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

Plaintiffs,

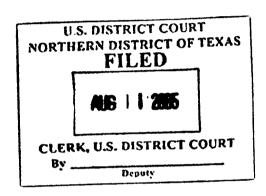
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UNITED STATES AIR FORCE; DR. JAMES G. ROCHE, Secretary, United States Air Force; UNITED STATES DEPARTMENT OF DEFENSE; and DONALD H. RUMSFELD, Secretary, Department of Defense,

Defendants.

CIVIL ACTION NO. 5:01-CV-289-C



NOTICE OF APPEAL

Notice is hereby given that all Plaintiffs in the above-named case hereby appeal to the United States Court of Appeals for the Fifth Circuit from the Order entered in this action on June 29, 2005, concerning the interim operating conditions for the Realistic Bomber Training Initiative pending completion of the supplemental environmental impact statement and issuance of agency decisions.

DATED: August //, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this // day of August 2005, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

John R. Parker, Esq. Assistant United States Attorney United States Department of Justice 1100 Commerce Street, 3rd Floor, Suite 300 Dallas, TX 75242	U.S. Mail Hand Delivery Overnight Delivery Telecopy (Fax)
David B. Glazer, Esq. U.S. Department of Justice Natural Resources Section Environment and Natural Resources Division 301 Howard Street, Suite 1050 San Francisco, CA 94105	U.S. Mail Hand Delivery Overnight Delivery Telecopy (Fax)

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