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United States Senate

WASHINGTON, DC 20510

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

August 9, 2005

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

Dear Chairman Principi:

On July 19, 2005, the Air Force replied to an inquiry from the Base Realignment and Closure Commission concerning ongoing litigation and court imposed constraints on the use of the primary military operating area (MOA) and military training route (MTR) that serves the aerial training requirements for both Dyess and Barksdale AFB. I found some of the Air Force replies to the commission's questions to be incorrect and I would like the opportunity to comment.

Background

The commission inquiry was based upon an issue I raised, which calls into question the wisdom of DoD's recommendation to consolidate all 67 operational B-1s at a single location, Dyess AFB. It had come to my attention that the primary bomber training area, upon which Dyess' B-1s depend for close proximity training, had been mired in litigation for the last five years, thus making both its future availability and its capability to support consolidated B-1 training uncertain. The training area, in fact, now operates subject to court order. The training airspace includes IR-178 MTR and Lancer MOA, together known as the Realistic Bomber Training Initiative (RBTI). The litigation in question challenges the Air Force's Record of Decision (ROD) and Environmental Impact Statement (EIS), both prepared pursuant to requirements of the National Environmental Policy Act (NEPA) as part of the process of obtaining FAA approval for the RBTI – a process begun in 1997 and still not approved because of the litigation. On appeal, the 5th Circuit found the EIS to be inadequate and set aside the ROD on October 12, 2004. The court further directed the District Court to determine the conditions upon which the Air Force could continue operations in the MTR and MOA. On June 29, 2005, the District Court imposed significant operating conditions limiting the continued Air Force use of the MTR and the MOA pending a supplemental EIS. There was no evidence in any of DoD's or Air Force's released BRAC deliberation documents or meeting minutes that this issue was discussed or considered in any detail. In fact, the Air Force has subsequently admitted that neither the present impact, nor future risk, posed by this litigation were factored into its deliberation because it did not have a method to calculate it into the MCI scoring.

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Air Force Statement: "This litigation was not factored into the MCI score for any Air Force base. There was no viable method to consider ongoing litigation in computation of the MCI score."

Comment: In acknowledging that this litigation (and the consequent results) were not factored into the MCI score, nor considered under *military judgment*, the Air Force has conceded that a substantial liability on present and, potentially, future training access, was not factored into its deliberation to consolidate all B-1s at Dyess AFB and how that would affect training readiness and inherent costs involved with flying to more distant alternative training areas. The inability to determine "a viable method" to address the ongoing litigation calls into question the overall credibility of scores related to Dyess training areas, and represents a substantial deviation from the BRAC criteria.

Air Force Statement: "The scoring methodology only considered the relative distance of entry and exit points to the subject installations."

Comment: The Air Force methodology for calculating the MCI score for bomber bases only included a quantitative assessment of ranges and routes, with no analysis of access, availability, flying limitations or true quality of heavy bomber training. This analysis fails to evaluate any factors that may cause adverse impact on training and readiness, and fails altogether to consider the ramifications of adding 24 B-1s to the Dyess inventory. The Director of Air Space Operations at Air Combat Command, Major General DeCuir, in a sworn statement to the court commented on the effect of the court imposed restrictions: *"It is my personal and professional opinion that losing the ability to use IR-178 and the Lancer MOA as currently configured will cause grievous and irreparable harm to Air Force training and the ability of the Air Force to meet its national defense objectives."* He went on to state: *"These changes to the bomber training program, which would be in effect while the Air Force completes the SEIS and the FAA takes action accordingly, do not in my opinion, allow aircrews to fully meet necessary realistic training objectives."*

Air Force Statement: "The Air Force voluntarily returned its training altitude to 500 ft AGL pending the outcome of a SEIS."

Comment: It is disturbing that the Air Force would apparently represent the status of the court imposed flying limitations as being "voluntarily" self-imposed. The facts, however, are indisputable. On January 31, 2005, the 5th Circuit directed that the district court set operating conditions under which the Air Force could continue to use the RBTI, pending the outcome of the SEIS. These conditions would not be "voluntary." The Air Force, seeking to avoid harsher restrictions requested by the plaintiffs, asked the court to accept certain limitations greater than those specified in the Air Force ROD that would still allow aircrews "the opportunity to train as realistically as possible." The ROD would have allowed flights in the MTR down to 300 feet AGL, and in the MOA down to 3,000 feet AGL. On June 29, 2005, the district court incorporated the Air Force proposed restrictions and imposed a floor of 500 feet AGL in the MTR, and 12,000 feet MSL in the MOA, pending the SEIS. These limitations are set under a court order and are in no way

"voluntary." It is inaccurate for the Air Force to imply that it willingly imposed these restrictions on itself, and thereby can change them at will.

Air Force Statement: "The Air Force didn't change its training to 500 ft AGL -- it proposed *lowering* its training altitude to 300 feet AGL when it created the RBTI along an existing route."

Comment: The Air Force was also incorrect when it made this statement, thus implying that 500 feet AGL was the normal training altitude on that same route. This statement is demonstrably false by the Air Force's own words. First, the Air Force originally proposed the RBTI route to be as low as 200 feet AGL, which was the minimum altitude of some route segments for the pre-existing IR-178. This fact is well documented in the Air Force ROD on page 7 point (2) of the "Management Actions." The Air Force, in fact, raised it to 300 feet AGL when drafting the ROD to address "public expressed concerns."

Air Force Statement: " [N]one of the court's rulings require the Air Force to return to court for approval as part of this process."

Comment: This litigation has been ongoing for years. The court clearly has oversight of any training conducted within the RBTI. Yet, this reply to the Commission implies the litigation is essentially over. First, the case is still subject to appeal and the court still has oversight of both the RBTI and the preparation and approval of the SEIS. If the Air Force wants the court to relinquish jurisdiction and authority in the matter, they will have to apply to the court for a dismissal. Second, even a casual review of the history of this case reflects the persistence of the plaintiffs. Any perceived flaws in subsequent Air Force or FAA decision-making on the RBTI may, and likely will, be challenged in court. The plaintiff groups have achieved one victory and if the Commission approves the consolidation of the B-1B fleet at Dyess AFB, with the consequent doubling of B-1B training operations, these plaintiffs will have yet another target rich environment for years of future litigation. The Air Force's response to the BRAC commission, implying that this litigation will be over (and that air operations will be unconstrained) when the Air Force and FAA complete their supplements does not reflect the history of the litigation or the implications of doubling the B-1B fleet at Dyess AFB. Indeed, the court has yet to even be informed by the Air Force that the number of B-1Bs and the training requirements at Dyess AFB may, in fact, double if the BRAC recommendation stands, though a supplemental EIS is underway per the court's order. It is clear that increased training operations flown from Dyess would only exacerbate the adverse environmental impacts on the plaintiffs, while still under the aegis of the court and completely change the dynamics of the supplemental EIS now being prepared.

Air Force Statement: "If the results do not support operations at 300ft AGL, the 500 ft AGL restriction will most likely apply."

Comment: It is very presumptive on the part of the Air Force to state that if the results of the supplemental EIS do not support operations at 300 feet AGL, "the 500 feet restriction will most likely apply." The Air Force can not be certain as to the final outcome and

what restrictions might apply, before the supplemental EIS has even been completed and any subsequent plaintiff challenges to the Department's analysis have been heard. The Air Force seems to be suggesting advanced foresight in knowing with certainty that the court will dismiss as meritless any arguments to be made by plaintiffs seeking greater limitations (e.g. 1,000 ft AGL minimum floor in the MTR), something that should never be assumed in litigation.

Air Force Statement: "As regards the volume of airspace, Dyess has "2.3 times the volume of airspace as Ellsworth."

Comment: This is not only irrelevant, it is misleading. First, the amount of airspace in comparison to Ellsworth has nothing to do with the actual question, which is how Dyess AFB would fare under an MCI score that accounts for the restrictions imposed by litigation. Further, the issue is whether the Air Force has an equivalent alternative to the RBTI within the 300-mile radius of Dyess, not whether there is generic airspace available to Dyess (belonging to other installations and probably approved for other types of aircraft). The RBTI was designed specifically for heavy bomber training and is a unique creation designed to interface with permanently housed electronic emitters and threat simulators situated at intervals along a specific low-level ingress route. The Air Force would not have created the RBTI, if it was not needed. The available "airspace" the Air Force implies can serve as a substitute to the RBTI was there before the RBTI was established, but apparently not adequate – hence why the RBTI was created. So, it appears odd that the Air Force would now assert that this same airspace can adequately replace the RBTI if it should be closed-down or limited by action of the court. In a separate sworn affidavit by Major General DeCuir, he unequivocally stated, *"The other sites, even collectively, would not be able to absorb the additional training hours required if the Dyess and Barksdale units were displaced from RBTI."*

Please understand, I am not advocating the consolidation of the nation's B-1B fleet at Ellsworth AFB, as an alternative to Dyess AFB. To the contrary, I believe it to be in this country's best interest to maintain the two separate B-1B bases we now have – in terms of preserving their security, operational effectiveness and overall quality of training. It is vitally important, therefore, that you receive the most accurate information available.

Thank you for your consideration.

Respectfully yours,

John Thune
United States Senator