JOHN THUNE
SOUTH DAKOTA

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

United States Senate

WASHINGTON, DC 20510

August 3, 2005

The Honorable Pete Geren
Acting Secretary of the Air Force
1670 Air Force Pentagon
Washington, D.C. 20330

Dear Mr. Secretary:

On 19 July 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 a key military operating area (MOA) and military training route (MTR) that serves the aerial training requirements for both Dyess and Barksdale AFB. I found the Air Force reply to be both disappointing and unresponsive to the commission's questions. Frankly, I find it distressing that the Air Force would apparently misrepresent the status of the litigation and attempt to mislead the Commission by suggesting that the constraints were "voluntarily" self-imposed.

The litigation in question challenged the Air Force's Record of Decision (ROD) and Environmental Impact Statement (EIS), both prepared by the Air Force pursuant to requirements of the National Environmental Policy Act (NEPA) before obtaining FAA approval to operate in IR-178 MTR and Lancer MOA, together known as the Realistic Bomber Training Initiative (RBTI). On appeal, the 5th Circuit found the EIS to be inadequate and set aside the ROD. 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 29 June 2005, after almost 5 years of judicial activity in the case, the District Court imposed significant operating conditions limiting the continued Air Force use of the MTR and the MOA pending a supplemental EIS.

The operating conditions directed by the court limits the effectiveness of MTR and MOA by imposing altitude limitations on air operations significantly greater than those specified in the Air Force ROD. (The ROD would have allowed flights in the MTR down to 300 feet AGL, and in the MOA down to 3,000 feet AGL. The court imposed a floor of 500 feet AGL in the MTR, and 12,000 feet MSL in the MOA.) As noted by the Director of Air Space Operations, Air Combat Command, Major General DeCuir, in a sworn affidavit to the federal court in January 2005, these changes "...do not, in my opinion, allow aircrews to fully meet necessary realistic training objectives." The suggestion made by the Air Force to the BRAC commission, that it "voluntarily returned its training altitude to 500 feet AGL" is disingenuous. In reality, the Air Force scrambled to mitigate the damage of the litigation and an impending court order, hardly a voluntary and willing concession.

320 NORTH MAIN AVENUE
SIOUX FALLS, SD 57104
(605) 334-9596

1313 WEST MAIN STREET
RAPID CITY, SD 57701
(605) 348-7551

320 SOUTH 1ST STREET
SUITE 101
ABERDEEN, SD 57401
(605) 225-8823

The Air Force was also misleading when it stated that "it proposed *lowering* its training altitude to 300 feet AGL when it created the RBTI along an existing route," 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."

This litigation has been ongoing for years. The court clearly has oversight of the matter. Yet, the Air Force reply to the Commission states that " [N]one of the court's rulings require the Air Force to return to court for approval as part of this process." This ignores several facts. First, the case is still subject to appeal. 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 rather cavalier attitude displayed by the Air Force in responding 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.

It also strikes me as somewhat 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." I am curious to know how the Air Force can be so 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.

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. As we present our arguments and evidence to the BRAC Commission to support that position, we will not, in any way, seek to intentionally mislead or distort the

facts. As the Air Force responds to Commission inquiries related to our presentations, we expect it to behave in a similar manner.

Sincerely,

John Thune
United States Senator