

# MILITARY VALUE OF THE AERIAL TRAINING ROUTES AND MILITARY OPERATING AREAS (MOA) SUPPORTING DYESS AFB

## SUMMARY

The USAF submitted flawed, misleading and egregiously incomplete analysis with respect to the availability, capability and future access to aerial training routes and MOAs supporting Dyess AFB. Inexplicably, the USAF failed to acknowledge in its analysis, scoring and recommendations that Dyess' primary training route (IR-178) and Lancer MOA, together known as the Realistic Bomber Training Initiative (RBTI), are in fact operating subject to a Federal District Court order that has placed limits on its availability and operating conditions. The USAF failed to consider that this training route and MOA have been under continuous litigation since 2000 and are, in fact, vulnerable to future litigation that could further limit USAF operations and access. The service also failed to reveal in its recommendations that these key Dyess training assets will remain subject to Court imposed restrictions until the USAF prepares a supplemental Environmental Impact Statement (EIS) and both the court and FAA issue new decisions on whether to retain these airspace training assets. Any such decision could result in yet further operational limitations. Finally, the USAF negligently failed to consider the cumulative effects from an increase of training requirements resulting from the addition of B-1s coming from Ellsworth and a possible court imposed cap on sortie-operations. As a consequence, the final DoD scoring value for Dyess AFB lacks integrity and was based upon flawed scores related to proximity to Airspace Supporting Mission (ASM) and Low Level Routes under the Current and Future Mission category. The over-inflation of Dyess' assessed military value in this category – in comparison to Ellsworth AFB - was a principle determining factor in placing Ellsworth on the closure list. Therefore, DoD substantially deviated from its evaluation of military criteria and the recommended consolidation of the B-1 fleet at Dyess AFB should be rejected.

## LITIGATION BACKGROUND

As early as 1997, the Air Force recognized that the aerial training ranges available to aircraft proximate to Dyess and Barksdale AFB were inadequate for realistic and effective training to ensure readiness. The Realistic Bomber Training Initiative was the result of that requirement. As such, an environmental impact statement (EIS) was initiated in December 1997. The AF initiative generated significant controversy with over 1,500 written and oral comments in opposition. The Final Environmental Impact Statement (FEIS) was published in January, 2000. The AF Record of Decision selected a route and range complex (IR-178 and the Lancer MOA) which it deemed critical to the effective training and readiness of bomber air crews stationed at Dyess and Barksdale AFB. After the FEIS was published in January, 2000, litigation was initiated in the United States District Court for the Western District of Texas on behalf of residents and organizations adversely affected by the noise, vibration, vortices and loss of value of their property resulting from the training flights over their land.<sup>1</sup>

- Two cases were decided by the District Court and were consolidated on appeal to the United States Court of Appeals for the Fifth Circuit, which decided on October 12, 2004 that the Air Force and FAA compliance with the National Environmental Policy Act, 42

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<sup>1</sup>:Davis Mountains Trans-Pecos Heritage Assoc., et. al., ("Plaintiffs"), v. United States Air Force, et. al., ("Defendants"), 249 F. Supp. 2d 763 (N.D. Tex. 2003); Welch v. USAF, 2001 U.S. Dist. LEXIS 21081 (N.D. Tex., Dec. 19, 2001)

U.S.C. 4321-4370(f), was defective. The Court of Appeals vacated the AF's Record of Decision, the decisions of the district court and the FAA orders approving the Realistic Bomber Training Initiative (RBTI) and ordered the AF to prepare a supplemental EIS (SEIS) (Westlaw at 2004 WL 2295986, No. 02-60288 (5th Cir. Oct. 12, 2004)).

- On January 31, 2005, the appellate court on petition for rehearing, denied the Air Force a rehearing but granted continued use of the RBTI pending the preparation of the EIS "under conditions of operation set by the district court." (2005 U.S. App. LEXIS 1620)
- On June 29, 2005, the district court issued an order imposing flying restrictions proposed by the USAF (under FCIF A05-01) to allow limited use pending the SEIS; thus setting limitations on the Air Force that no aircraft will fly lower than 500 ft. AGL, AP/1B altitude in IR-178, and no lower than 12,000 ft. MSL when utilizing Lancer MOA.

From the foregoing, it is apparent that Dyess' access to the RBTI throughout the foreseeable future is far from being a settled issue. The approval of the SEIS is a lengthy process, potentially lasting up to two years, assuming no further legal challenges. The RBTI's future availability as an optimal training range is, in fact, tenuous at best and vulnerable to finding itself in a continuous litigation limbo. In effect, Dyess access to RBTI is presently under the control of the district court, not the Air Force. And, it is operating under altitude limitations which render the training inadequate when compared to alternative MOAs (e.g. compare to Powder River MOA, Hays MOA, Belle Fourche MTR, Nevada Test & Training Ranges (NTTR) and the Utah NTTR).

#### QUALITY OF TRAINING UNDER COURT ORDER

On January 5, 2005, the Director of Air and Space Operations, Air Combat Command, filed with the appellate court two separate declarations. First, he asserted the essential nature of IR-178 and the Lancer MOA to the readiness and training of the Dyess AFB bombers. His declaration described the continued use of the RBTI as critical. Second, he asserted the Air Force will make temporary operational changes to its use of the RBTI by flying no lower than 500 feet above ground level or the published minimum altitudes on IR-178, whichever is higher and that aircraft will fly no lower than 12,000 feet mean sea level (an increase of approximately 6,000 ft.) during normal training operations in the Lancer MOA (FCIF A05-01).

- As to the matters of military value, two major discrepancies are generated by the declarations. First, these proffered changes are characterized as temporary, implying that these limitations will be abandoned when the Supplemental EIS and resulting Record of Decision are completed. No doubt, this will be challenged in the courts by the plaintiffs when the Supplemental EIS is completed, unless the Air Force abandons the present location of the RBTI site. At a minimum, this represents substantial delay in final judicial approval, if such final approval can ever be obtained. The second declaration is an acknowledgement that the court accepted limitations are inadequate for Air Force training; "[T]he 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."

Thus, by the admission of the Director of Air and Space Operations, Air Combat Command, adequate training objectives for the B-1B bomber crews presently stationed at Dyess AFB cannot be met with the court imposed restrictions of June 29, 2005.

## FUTURE LITIGATION

As this matter has been in litigation since at least 2001, it is reasonable to conclude that litigation could, and probably will, continue pending the results of the SEIS.<sup>2</sup> However, the recommended consolidation of all USAF B1-B operations at Dyess AFB raises numerous new issues that have yet to be addressed:

- The court order of June 29, 2005, and prior filings, make no mention of Air Force plans to consolidate and double the number the B-1B aircraft at Dyess AFB.
- Although the January, 2005 court order was well before the BRAC recommendations were announced, it should be noted that the USAF failed to advise the district court of the BRAC recommendations after their release and the possibility of increased flight activities at Dyess (an estimated 35% increase in annual missions utilizing the RBTI).
  - Whatever the existing baseline of flight operations in the RBTI, that number will increase significantly if all B-1Bs are located to Dyess AFB - unless the Air Force accepts a significant decrease in readiness and training. As noted by the appellate court in its reversal and remand of the case, the implementing regulations of NEPA, promulgated by the President's Council on Environmental Quality, at 40 C.F.R. 1502.9(c)(1), "... require agencies to supplement an EIS if the agency makes substantial changes to the proposed action or significant new circumstances or information arise bearing on the proposed action or its impacts."
- It is clear that the Air Force will be required to supplement the RBTI EIS to reflect the impacts associated with the increase in use of the RBTI training areas. The potential increases of required sortie-operations will only exacerbate the complaints raised by plaintiffs, thereby leading to further litigation delaying and jeopardizing the final approval of the RBTI project.
  - While the failure of the Air Force to inform the court of these issues is a matter for the court to address, the failure of the Air Force to apprise the Base Closure Commission of the limitations on use and challenges to the RBTI represents a serious omission and should be sternly addressed by the Commission in the context of its evaluation of the Air Forces credibility in preparing their military value assessments.
  - Of particular note, the Air Force's analysis of the environmental implications of the recommended closure of Ellsworth and the movement to Dyess reflects that "... flight operations at Dyess have been diverted, delayed or rerouted because of noise. Additional operations may further impact this constraining factor and

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<sup>2</sup> It should be noted to the Commission as a matter of significance, the State of Texas submitted an Amicus Curiae brief in support of Plaintiffs in their successful appeal before the Fifth Circuit.

therefore further restrict operations.” This particular comment is noteworthy for three reasons:

- By placing it in the analysis for environmental implications of the recommendation, the Air Force has relegated this constraining factor to a category of the statutory criteria that does not pertain to military value, thereby avoiding the clear implication of the constraint on readiness;
- The language used is similar to that reported for other gaining bases, thereby masking the constraint and implying that this limitation on use is not worthy of special attention as a matter embroiled in litigation;
- By commenting on the need for analysis under NEPA in a routine manner, the Commission would not be alerted to the predictable contentiousness of the addition of significantly more sortie-operations in these range areas.<sup>3</sup>

## CONCLUSION

In assessing the military value of IR-178 and Lancer MOA, the analysis performed by the Air Force for the purposes of BRAC 2005 implies that these training assets will be available to Dyess AFB without limitation or qualification. As the facts suggest, the related USAF data and assumptions used were grossly incorrect. In fact, the continued use of these ranges is now under the aegis of the judicial system and is potentially subject to additional litigation that renders the future use of the ranges supporting Dyess AFB problematic, at best.

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<sup>3</sup> Although the Base Closure statute includes an exemption from NEPA for the recommendations of the Department of Defense and the actions of the Commission, this exemption does not extend to the implementation of the decisions of the Commission. Under ordinary circumstances, it would be appropriate for the Commission to assume that the Air Force can implement the decision of the Commission. However, no such assumption would be appropriate where, as here, there is a serious challenge to the closely related actions of the Air Force.

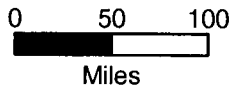
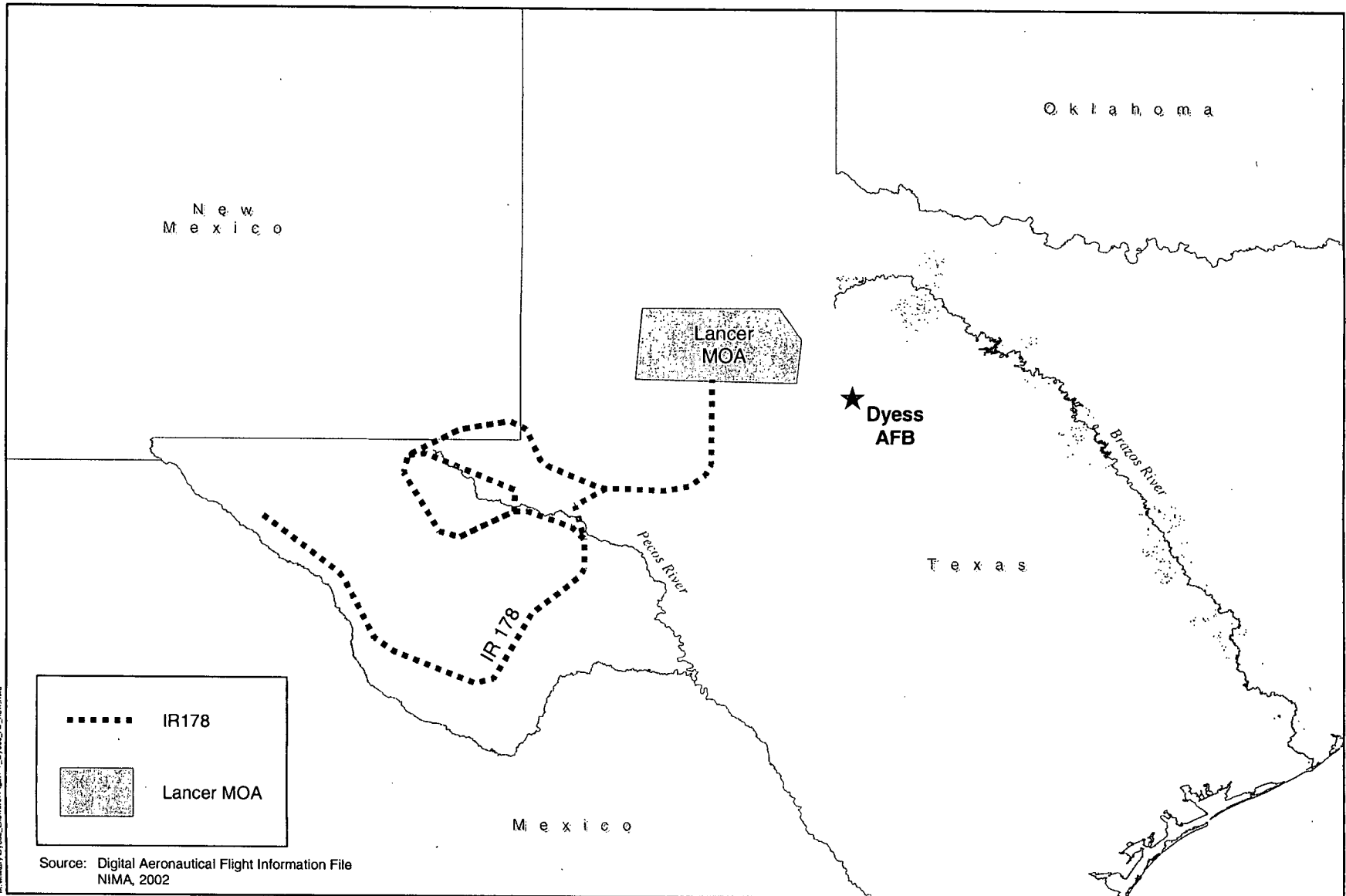


Figure 2.1-1  
Traning Airspace for Dyess AFB B-1s



**RECORD OF DECISION  
FOR THE  
REALISTIC BOMBER TRAINING INITIATIVE**

An Environmental Impact Statement (EIS) was prepared to aid in determining whether to establish the Realistic Bomber Training Initiative (RBTI). The purpose of RBTI is to:

- (1) Permit aircrews from Barksdale and Dyess Air Force Bases to train for their various missions while maximizing combat training time;
- (2) Provide the type and linked arrangement of airspace and other assets that support realistic training for bomber aircrews, and
- (3) Ensure that flexibility and variability in training supports bomber combat missions.

RBTI will fulfill this purpose by establishing a set of linked training assets comprising an Electronic Scoring Site system that will provide realistic bomber training close enough to Barksdale and Dyess AFBs to effectively use limited flying hours. These assets would be located within approximately 600 nautical miles of Barksdale and Dyess AFBs and would involve:

- (1) A Military Training Route (MTR) that offers variable terrain for use in terrain following and terrain avoidance, overlies lands capable of supporting electronic threat emitters and electronic scoring sites, permits flights down to 300 feet above ground level (AGL) in some segments, and links to a Military Operations Area (MOA).
- (2) A MOA measuring at least 40 by 80 nautical miles with a floor of 3,000 feet AGL and extending to 18,000 feet above mean sea level (MSL) used for avoiding simulated threats and simulated attacks.
- (3) An Air Traffic Control Assigned Area (ATCAA) above the MOA at 18,000 to 40,000 feet MSL to be used for high-altitude training.
- (4) Establishing, through lease or purchase, a set of five locations (15 acres each) under or near the MTR corridor, and an additional five locations (15 acres each) under or near the MOA, for placing electronic threat emitters that would simulate the variety of realistic threats expected in combat.
- (5) Constructing two Electronic Scoring Sites co-located with operations and maintenance centers, one under or near the MTR corridor and the other en route from the bases to the MTR and MOA on leased, purchased, or AF-owned property.
- (6) Decommissioning two existing Electronic Scoring Sites in Harrison, Arkansas and La Junta, Colorado that do not fulfill the B-1 and B-52 training requirements. These sites do not provide the required training assets outlined above in items 1, 2 and 3.

*ALTERNATIVES ANALYZED*

Four alternatives were analyzed, a no-action alternative (Alternative A), and three action alternatives, Alternatives B, C and D. All three action alternatives fulfill the need defined

under the proposed action. Alternative B IR-178/Lancer MOA and Alternative C IR-178/Texon MOA are almost entirely in western Texas. Only a small portion of airspace in these alternatives extends into New Mexico. Alternative D IR-153/Mt. Dora MOA is located primarily in northeastern New Mexico with portions of the MTR extending into northwestern Texas. All three action alternatives predominantly coincide with existing MTR or MOA airspace; little area not currently exposed to overflights would be affected. Under Alternative A: No-Action, the Air Force would continue using existing assets and airspace would remain unchanged. All three action alternatives meet operational goals defined for RBTI. Based on the analysis presented in the EIS, agency input, and public comments, the Air Force believes Alternative B is preferable to Alternatives A, C and D. Alternative B meets all operational requirements with less potential for adverse environmental impacts than Alternative C and significantly less than Alternative D. Therefore, Alternative B is the Air Force's environmentally and operationally preferred alternative.

### *PUBLIC INVOLVEMENT*

The public involvement process followed by the Air Force for RBTI included:

- (1) Community meetings prior to issuing a Notice of Intent (NOI) to prepare the RBTI Environmental Impact Statement (EIS);
- (2) Scoping comment period and meetings;
- (3) Intergovernmental /Interagency Coordination for Environmental Planning (IICEP) and Agency consultation; and
- (4) Public comment period and hearings.

Efforts for early public involvement began in December 1997. These efforts consisted of six informal community meetings in Texas and New Mexico to gain input on the RBTI alternative identification process. Input from the community meetings helped shape the alternatives.

Official notification of the Air Force RBTI proposal began with publication of the NOI in the Federal Register on December 19, 1997. In late January and early February 1998, 11 scoping meetings were held in affected communities in Texas, New Mexico, Colorado and Arkansas. This started the scoping period during which the Air Force solicited comments from the public, interest groups and agencies to help define the scope of analysis for the EIS and to aid in identification of additional alternatives. All comments and letters were considered and used to help develop the scope for the analysis for the draft EIS. The scoping period lasted through April 3, 1998, including a 45 day extension. Public involvement continued in April 1998 (following the formal scoping period), when Air Force representatives were invited to participate in two community meetings held in Taos and Angel Fire, New Mexico.

As part of Government-to-Government consultation for RBTI, 32 tribes and/or tribal-affiliated organizations that historically resided in the affected area were notified. At their request, ongoing discussions and consultations have continued throughout the National Environmental Policy Act (NEPA) process with the Jicarilla Apache Tribe and the Taos Pueblo in New Mexico.

Through the IICEP process, appropriate federal, state and local agencies were notified of the proposed action. In total, over 100 IICEP letters were sent to agencies and officials. Comments from these agencies and officials were reviewed for incorporation into the environmental analysis. The IICEP process also provided the Air Force an opportunity to seek and obtain data on resources within the jurisdiction of each agency or organization, and to gather relevant information on issues affecting the RBTI proposal. Meetings with several agencies were conducted, including with the U.S. Fish and Wildlife Service (USF&WS) as part of consultation for Section 7 of the Endangered Species Act.

The Federal Aviation Administration (FAA) was a cooperating agency for this EIS.

A 45 day public comment period on the draft EIS began with publication of the Notice of Availability (NOA) on March 19, 1999. As with scoping, a 45-day extension was granted, allowing 90 days total for the public comment period. Fifteen meetings were held in 11 locations in Texas, New Mexico, Colorado and Arkansas. All comments were reviewed and considered in development of the final EIS, and this decision.

The Air Force goal is to continuously balance readiness training with the environment and community concerns. This includes actions during the proposal development process, management actions coincident with project start-up, and most importantly, those long-term actions that continuously address community concerns throughout the life of the project.

### *DECISION*

After considering the operational utility and potential environmental consequences of the three RBTI action alternatives and the No-Action Alternative, the Air Force chooses to implement Alternative B, which involves locating the appropriate training assets under IR-178/Lancer MOA. The Air Force will take action required to request FAA implementation of the airspace modifications necessary to implement Alternative B.

### *IMPACTS*

Historically, the affected airspace under RBTI accommodated aircraft overflights, including military flight training activities and civil aviation. Existing airspace will be used to the maximum extent possible for IR-178 and Lancer MOA. Some airspace will be eliminated and new airspace added. Under Alternative B, airspace management will remain similar to that found today. The potential for conflicts with civil aviation will not be significant, although coordinating with civilian aviators involving weather-modification, crop dusting, ranching and other similar management activities will require increased attention and resources from the Air Force. For Alternative B, average daily sortie operations will range from 1 to 10, depending upon the segment of the MTR. Sortie numbers will vary from an increase of 1 to 6 to a decrease of up to 5 per operational day as compared to historic airspace use on given segments.

Noise levels will range from 45 to 61 dB (Average Day-Night Sound Level [DNL]) for Alternative B. There will be an increase in noise of 2 to 13 dB depending on the route/MOA segment examined. Noise analysis indicated an increase in the percentage of people potentially



highly annoyed under RBTI. For Alternative B, the percentage of highly annoyed people could rise to a maximum of 8 percent for portions of IR-178. Under the Lancer MOA, the analysis showed approximately one percent of the people could be highly annoyed.

Effects of aircraft emissions on air quality and the potential for aircraft mishaps will be inconsequential for Alternative B.

Overall, there would be no likely effects to designated land use, recreation or visual resources. Increases in noise levels from aircraft could be perceived by some as affecting their quality of life. However, the analysis revealed no impacts on recreation, property values, or hunting leases. This is evidenced in other MOAs within the region where recreation, property values and hunting leases remain unaffected by aircraft overflights more numerous than those projected for RBTI. Six communities under Alternative B could experience increases in noise levels of 2 to 8 dB. Aircrews, however, will avoid overflights of communities by the standards set forth in FAA regulations.

Field surveys at the emitter and Electronic Scoring Sites for Alternative B did not identify any threatened, endangered or sensitive species. Under Alternative B, increased overflights would occur over estimated historic Aplomado Falcon habitat; however, only 11 sightings have occurred in the region since 1992. The Air Force has consulted with the USF&WS on the Endangered Species Act relative to RBTI. The USF&WS concurs with the Air Force determination that this action is not likely to adversely affect threatened and endangered species.

Construction of the Electronic Scoring Sites in Texas will result in a beneficial socioeconomic impact. Decommissioning of the Electronic Scoring Sites in Harrison, Arkansas and La Junta, Colorado will result in minimal negative socioeconomic impacts. The effects of flying activities are not expected to produce measurable impacts on the economic value of the land since this area has been generally overflowed since the 1940's. Other factors, such as drought, market prices, community amenities, and proximity to urban areas are more likely to affect land values than military aircraft overflights. The environmental justice analysis established that implementation of Alternative B will have no adverse impact.

The Air Force surveyed the proposed emitter and Electronic Scoring Sites for cultural resources that could be affected by construction and ground operations. One archaeological site could be affected under Alternative B. However, impacts to this site could be avoided or mitigated to insignificance through completion of the Section 106 process of the National Historic Preservation Act and employment of a combination of avoidance, monitoring, testing, and data recovery (if needed), or selection of an alternative site. Existing research and consultation with appropriate Native American tribes indicated no identified traditional resources within the affected airspace of Alternative B. Although 15 National Register-listed properties could be overflowed, overflights will occur in areas already subject to military aircraft overflights and aircraft would not create a new visual or audible feature in an otherwise historic or traditional landscape. Noise from aircraft overflights would not reach levels likely to damage structures. Therefore, the effects of visual or audible intrusions or damage from noise or vibrations would be negligible. No National Historic Landmarks are located under Alternative B.

Proper management will be followed to reduce effects of any potential short-term wind and water erosion of surface soils to insignificant levels. Landowners will retain control of any mineral or water rights. No long-term impacts to water resources will occur as a result of construction or use of the Electronic Scoring Sites or emitters.

There would be no cumulative impacts from the interaction of RBTI Alternative B with other past, present or reasonably foreseeable actions.

### *MITIGATION MEASURES*

The mitigation measures presented below reflect specific actions the Air Force will take to reduce the potential for particular effects to resources, as identified in the EIS.

- (1) The Air Force will reduce potential impact (as identified by USF&WS) to Aplomado Falcon habitat by:
  - (a) Evaluating the areas under IR 178 that are not currently being surveyed.
  - (b) Expanding the ongoing Aplomado Falcon survey into areas the evaluation determines may be Aplomado Falcon habitat.
  
- (2) The Air Force will avoid or reduce potential impacts to biological and cultural resources from construction or modification of access roads, power lines, and telephone lines by:
  - (a) Consulting with State Historic Preservation Office (SHPO).
  - (b) Consulting with USF&WS.
  - (c) Surveying rights-of-way for cultural and biological resources.
  - (d) Realigning rights-of-way to avoid resources, where feasible.
  - (e) Developing and implementing site-specific mitigation measures, if required.
  
- (3) The Air Force will avoid or reduce potential impacts to cultural resources from the decommissioning of the La Junta Electronic Scoring Site, including disposition of lands out of federal ownership, by completion of the National Historic Preservation Act's Section 106 process.

### *MANAGEMENT ACTIONS*

In addition to the mitigation measures described above, two types of management actions are designed to address concerns:

*Management Actions incorporated into the proposal:* These actions used project design, configuration, and/or component location to reduce or eliminate potential impacts to a resource or suite of resources. Such actions include the use of existing information or data collected as part of the public involvement process to avoid siting alternative components in areas or settings known to contain resources that could be significantly

affected. Such avoidance is not absolute; rather it is balanced with training and operational considerations needed to perform realistic bomber training.

- (1) Citizens expressed concerns about creating new military airspace. The Air Force followed the FAA policy of using existing airspace to the maximum extent possible. This proposal used 85% existing airspace by:
  - (a) Linking segments of existing MTRs to form a complete MTR, IR 178.
  - (b) Linking portions of three existing MOAs to form a complete MOA, the Lancer MOA.
- (2) Concerns were expressed about the structure of the proposed MTR, IR 178. The Air Force reduced noise related to individual overflights and associated effects by raising the floor of several segments of the proposed IR 178.
- (3) Agencies expressed concerns that flexibility was needed in the number and siting of emitter sites and Electronic Scoring Sites to address potential environmental impacts. The Air Force provided flexibility and minimized impact by:
  - (a) Considering more sites than would be required for the Electronic Scoring Sites and emitter sites.
  - (b) Eliminating many candidate sites that contained known historical sites, or were located too close to homes, large structures, and obvious bodies of water.
- (4) The public expressed concerns with potential environmental consequences due to site and infrastructure construction associated with emitter sites and Electronic Scoring Sites. The Air Force minimized impact by:
  - (a) Selecting candidate sites as close as possible to existing roads, as well as power and telephone lines so that less area would be affected by construction.
  - (b) Choosing previously disturbed areas, where feasible.
  - (c) Conducting surveys to locate sensitive cultural or biological resources to avoid or minimize disturbance.
- (5) Citizens expressed concerns about exposing the public to radio frequency energy from emitters. The Air Force minimized risk and ensured public safety by using sites that contain an 800 X 800 foot fenced area that provides 150 feet of extra safe-separation distance.
- (6) Concerns were expressed that construction and maintenance of emitter sites and Electronic Scoring Sites could increase erosion and therefore affect soils and water resources. The Air Force will minimize impacts, preserve wetlands and drainages, and reduce erosion by specifying best management practices and selecting sites that avoid wetlands, drainages, and areas with sloped terrain.

- (7) The public and agencies expressed concerns regarding the altitude of the MOA floor. The Air Force will provide additional separation between military operations and civil aviation by establishing the floor of the MOA above the Instrument Approach Procedures minimum altitudes for all airports under or adjacent to the Lancer MOA.

*Management Actions to address community/agency concerns:* These actions were developed to address concerns voiced by the public and agencies. These concerns were received through oral and written comments during the public comment period.

- (1) Citizens expressed concerns about the increased number of flights proposed for IR 178. The Air Force will reduce the impact of individual low-altitude-flights, compared to projections in the EIS, by limiting the annual sortie-operations to 1,560 (about 6 per day), instead of the proposed 2,600 (about 10 per day). || ★
- (2) The public expressed concerns that the floor of some segments of the proposed IR 178 were proposed to be lower (200 feet AGL) than the minimum flight altitude of 300 feet AGL. The Air Force will institute IR 178 segment altitudes that correspond with minimum flight altitudes by raising the floor of all segments of IR 178 to a minimum of 300 feet AGL. || ★
- (3) Agencies and the public expressed concerns about the interaction between military use of the Lancer MOA and underlying airport traffic. They also indicated concern about the interaction between military use of IR 178 and the Lancer MOA with general aviation activities in the region. The Air Force will increase communication opportunities with civil aviators by establishing a 1-800 telephone number to Dyess AFB for airspace schedule information. Additionally, the Air Force will allow easier access to local airports, raise awareness and avoid potential conflicts between military and general aviation aircraft flying in local airspace by establishing a Military Radar Unit (MRU) and real-time communications. The MRU will be operational concurrently and co-located with the en route Electronic Scoring Site, and will become a critical part of the long-term actions that continuously address community concerns.
- (4) The public expressed concerns about conflicts between military flights and local aviation in the vicinity of the proposed re-entry route on IR 178. The Air Force will reduce the potential for conflicts by raising the floor of the IR 178 re-entry route to 6,000 feet MSL.
- (5) Concerns were expressed that there could be an increase in noise complaints and some citizens indicated that noise complaints are not handled effectively. The Air Force will provide improved communication opportunities between the public and the Dyess AFB Public Affairs Office by publicizing an existing 1-800 telephone number, and encouraging citizens to contact the base with concerns or complaints.

- (6) The public and agencies expressed concern about the potential adverse effect on known cultural resources associated with locating the en route Electronic Scoring Site near Dyess AFB. The Air Force will continue to develop and examine ways to minimize these potential effects to include the possibility of locating the en route Electronic Scoring Site on an evaluated candidate site under the Lancer MOA, at a local municipal airport, or other suitable location. In the event this management action leads to a substantive change, the Air Force will undertake any additional environmental analysis required by this change. Additionally, aircraft overflights will be limited to 5,000 AGL or higher when within 3 nautical miles of the en route Electronic Scoring Site.
- (7) Although not addressed in the EIS, the Air Force will also implement the following initiatives to further enhance public involvement:
  - (a) Designate Dyess AFB as the single point of contact for all noise complaints within the confines of the Lancer MOA.
  - (b) Create a web site to provide the public RBTI information.
  - (c) Establish a team to routinely gather public issues and information to address citizen concerns.

#### *SUMMARY*

The Air Force will continue to work with the FAA and other federal agencies, state agencies, and local communities during and after the establishment of the Realistic Bomber Training Initiative. This interaction will aid in the reduction of noise impacts on the affected area and form the basis for long-term actions that will continuously address community concerns throughout the life of the project. These actions will help achieve the Air Force goal to continuously balance readiness training with the environment and community concerns.

The EIS used public involvement to identify alternatives and impacts, and assess the environmental consequences associated with the Realistic Bomber Training Initiative. Where feasible, the Air Force developed mitigation measures and management actions to minimize the environmental impact and address the concerns and comments of agencies and the public.



MARVIN R. ESMOND, Lt Gen. USAF  
Deputy Chief of Staff  
Air & Space Operations

January 31, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 02-60288

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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.

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No. 03-10506

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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.

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No. 03-10528

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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.

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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.

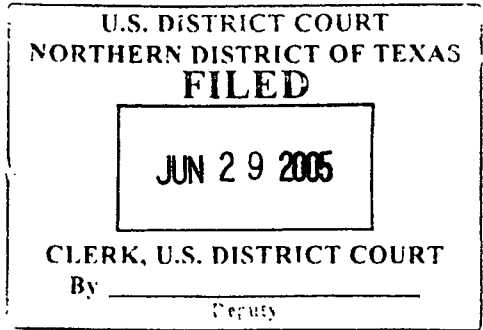
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\*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.



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;<sup>1</sup>
- (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;

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<sup>1</sup>Defendants 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 29<sup>th</sup> day of June, 2005.

  
SAM R. CUMMINGS  
UNITED STATES DISTRICT JUDGE