

94. Otis Air National Guard Base, MA, Lambert St. Louis International Airport Air Guard Station, MO, and Atlantic City Air Guard Station, NJ (AF 25)

- a. **Realign Otis ANGB, MA.** Distribute the fifteen F-15 aircraft assigned to the 102^d Fighter Wing's (ANG) to meet the Primary Aircraft Authorizations (PAA) requirements established by the Base Closure and Realignment recommendations of the Secretary of Defense, as amended by the Defense Base Closure and Realignment Commission. The 253^d Combat Communications Group, and 267th Communications Squadron will remain in place at Otis, with 104th Fighter Wing at Barnes providing administrative support as the parent wing. An air sovereignty alert (ASA) facility will be constructed at Barnes Municipal Airport Air Guard Station, MA.¹ Firefighter positions from Otis will move to Barnes Municipal Airport Air Guard Station, MA.

If the Commonwealth of Massachusetts decides to change the organization, composition and location of the 102^d Fighter Wing (ANG) to integrate the unit into the Future Total Force, all other personnel allotted to the 102^d Fighter Wing (ANG) will remain in place and assume a mission relevant to the security interests of the Commonwealth of Massachusetts and consistent with the integration of the unit into the Future Total Force, including but not limited to air mobility, C4ISR, Information Operations, engineering, flight training or unmanned aerial vehicles. Where appropriate, unit personnel will be retrained in skills relevant to the emerging mission.

This recommendation does not effect a change to the authorized end-strength of the Massachusetts Air National Guard. The distribution of aircraft currently assigned to the 102^d Fighter Wing (ANG) is based upon a resource-constrained determination by the Department of Defense that the aircraft concerned will better support national security requirements in other locations and is not conditioned upon the agreement of the commonwealth.

- b. **Realign Lambert-St. Louis International Airport Air Guard Station, St. Louis, MO.** Distribute the fifteen F-15 aircraft assigned to the 131st Fighter Wing to meet the Primary Aircraft Authorizations (PAA) requirements established by the Base Closure and Realignment recommendations of the Secretary of Defense, as amended by the Defense Base Closure and Realignment Commission. The 157th Air Operations Group (AOG) and the 218th Engineering Installation Group (EIG) will relocate from Jefferson Barracks geographically separated unit (GSU) into space at Lambert International. Jefferson Barracks real property accountability will transfer to the Army.

If the State of Missouri decides to change the organization, composition and location of the 131st Fighter Wing (ANG) to integrate the unit into the Future Total Force, all other personnel allotted to the 131st Fighter Wing (ANG) will remain in place and assume a mission relevant to the security interests of the State of Missouri

¹ As a technical correction, the Commission deleted the language "Bradley International Airport Air Guard Station, CT" and inserted in its place the language "Barnes Municipal Airport Air Guard Station, MA" to reflect the intent of the Commission. Because the air superiority fighter basing in that region was relocated from Otis ANGB to Barnes AGS, the ASA facility must also be relocated to Barnes AGS, rather than to Bradley Field.

and consistent with the integration of the unit into the Future Total Force, including but not limited to air mobility, C4ISR, Information Operations, engineering, flight training or unmanned aerial vehicles. Where appropriate, unit personnel will be retrained in skills relevant to the emerging mission.

This recommendation does not effect a change to the authorized end-strength of the Missouri Air National Guard. The distribution of aircraft currently assigned to the 131st Fighter Wing (ANG) is based upon a resource-constrained determination by the Department of Defense that the aircraft concerned will better support national security requirements in other locations and is not conditioned upon the agreement of the state.

- Establish 18 PAA F-15 aircraft at the 125th Fighter Wing, Jacksonville International Airport Air Guard Station, Florida (ANG);
- Establish 18 PAA F-16 aircraft at the 177th Fighter Wing, Atlantic City International Airport Air Guard Station, New Jersey (ANG);
- Establish 18 PAA F-16 aircraft at the 158th Fighter Wing, Burlington International Airport Air Guard Station, Vermont (ANG).²

² By Motion 94-4A, the Commission struck the entire text of recommendation 94, which read “**Close Otis ANGB, MA.** The 102^d Fighter Wing’s F-15s will be distributed to the 125th Fighter Wing, Jacksonville International Airport Air Guard Station, FL (three aircraft), and 177th Fighter Wing, Atlantic City International Airport Air Guard Station, NJ (12 aircraft). The 253^d Combat Communications Group, and 267th Communications Squadron will remain in place at Otis, with 104th Fighter Wing at Barnes providing administrative support as the parent wing. An air sovereignty alert (ASA) facility will be constructed at Bradley International Airport Air Guard Station, CT. Firefighter positions from Otis will move to Barnes Municipal Airport Air Guard Station, MA. **Realign Lambert-St. Louis International Airport Air Guard Station, St. Louis, MO.** The 131st Fighter Wing’s F-15s (15 aircraft) will distribute to the 57th Fighter Wing, Nellis Air Force Base, NV (nine aircraft), and 177th Fighter Wing, Atlantic City International Airport Air Guard Station, NJ (six aircraft). **Realign Atlantic City International Airport Air Guard Station, NJ.** The 177th Fighter Wing’s F-16s will be distributed to the 158th Fighter Wing, Burlington International Airport Air Guard Station, VT (three aircraft), and retire (12 aircraft). The wing’s expeditionary combat support (ECS) elements will remain in place. Firefighter positions move to Scott Air Force Base, IL. The 157th Air Operations Group (AOG) and the 218th Engineering Installation Group (EIG) will relocate from Jefferson Barracks geographically separated unit (GSU) into space at Lambert International. Jefferson Barracks real property accountability will transfer to the Army.”, and inserted in its place the language “**Realign Otis ANGB, MA.** Distribute the fifteen F-15 aircraft assigned to the 102^d Fighter Wing’s (ANG) to meet the Primary Aircraft Authorizations (PAA) requirements established by the Base Closure and Realignment recommendations of the Secretary of Defense, as amended by the Defense Base Closure and Realignment Commission. The 253^d Combat Communications Group, and 267th Communications Squadron will remain in place at Otis, with 104th Fighter Wing at Barnes providing administrative support as the parent wing. An air sovereignty alert (ASA) facility will be constructed at Bradley International Airport Air Guard Station, CT. Firefighter positions from Otis will move to Barnes Municipal Airport Air Guard Station, MA. If the Commonwealth of Massachusetts decides to change the organization, composition and location of the 102^d Fighter Wing (ANG) to integrate the unit into the Future Total Force, all other personnel allotted to the 102^d Fighter Wing (ANG) will remain in place and assume a mission relevant to the security interests of the Commonwealth of Massachusetts and consistent with the integration of the unit into the Future Total Force, including but not limited to air mobility, C4ISR, Information Operations, engineering, flight training or unmanned aerial vehicles. Where appropriate, unit personnel will be retrained in skills relevant to the emerging mission. This recommendation does not effect a change to the authorized end-strength of the Massachusetts Air National Guard. The distribution of aircraft currently assigned to the 102^d Fighter Wing (ANG) is based upon a resource-constrained determination by the Department of Defense that the aircraft concerned will better support national security requirements in other locations and is not conditioned upon the agreement of the commonwealth.

66. Marine Corps Support Activity Kansas City, MO (DoN 19)

Close Marine Corps Support Activity, Kansas City, MO. If the State of Louisiana obtains funding and commences construction of the Federal City project proposed for the Naval Support Activity West Bank property on or before September 30, 2008, then relocate Marine Corps Reserve Support Command element of Mobilization Command to that facility on the Naval Support Activity West Bank property, New Orleans, LA, and consolidate with Headquarters, Marine Forces Reserve. The remaining tenants will be retained as stated in the DoD recommendation. If the State of Louisiana fails to do so on or before September 30, 2008,³ then relocate Marine Corps Reserve Support Command element of Mobilization Command to Naval Air Station Joint Reserve Base New Orleans, LA,⁴ and consolidate with Headquarters, Marine

✓ **Realign Lambert-St. Louis International Airport Air Guard Station, St. Louis, MO.** Distribute the fifteen F-15 aircraft assigned to the 131st Fighter Wing to meet the Primary Aircraft Authorizations (PAA) requirements established by the Base Closure and Realignment recommendations of the Secretary of Defense, as amended by the Defense Base Closure and Realignment Commission. The 157th Air Operations Group (AOG) and the 218th Engineering Installation Group (EIG) will relocate from Jefferson Barracks geographically separated unit (GSU) into space at Lambert International. Jefferson Barracks real property accountability will transfer to the Army. If the State of Missouri decides to change the organization, composition and location of the 131st Fighter Wing (ANG) to integrate the unit into the Future Total Force, all other personnel allotted to the 131st Fighter Wing (ANG) will remain in place and assume a mission relevant to the security interests of the State of Missouri and consistent with the integration of the unit into the Future Total Force, including but not limited to air mobility, C4ISR, Information Operations, engineering, flight training or unmanned aerial vehicles. Where appropriate, unit personnel will be retrained in skills relevant to the emerging mission. This recommendation does not effect a change to the authorized end-strength of the Missouri Air National Guard. The distribution of aircraft currently assigned to the 131st Fighter Wing (ANG) is based upon a resource-constrained determination by the Department of Defense that the aircraft concerned will better support national security requirements in other locations and is not conditioned upon the agreement of the state.

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- o Establish 18 PAA F-15 aircraft at the 125th Fighter Wing, Jacksonville International Airport Air Guard Station, Florida (ANG);
 - o Establish 18 PAA F-16 aircraft at the 177th Fighter Wing, Atlantic City International Airport Air Guard Station, New Jersey (ANG);
 - o Establish 18 PAA F-16 aircraft at the 158th Fighter Wing, Burlington International Airport Air Guard Station, Vermont (ANG)."

³ By Motion 66-4B, the Commission struck the language "relocate Headquarters, Marine Forces Reserve Support Command element of Mobilization Command to that facility on the Naval Support Activity West Bank property, New Orleans, LA. If the State of Louisiana fails to construct an appropriate Federal City facility on or before September 30, 2008," and replaced it with "relocate Marine Corps Reserve Support Command element of Mobilization Command to that facility on the Naval Support Activity West Bank property, New Orleans, LA, and consolidate with Headquarters, Marine Forces Reserve. The remaining tenants will be retained as stated in the DoD recommendation. If the State of Louisiana fails to do so on or before September 30, 2008,".

⁴ By Motion 66-4A, the Commission struck the language "Relocate Marine Corps Reserve Support Command element of Mobilization Command to Naval Air Station Joint Reserve Base New Orleans, LA," and inserted in its place the language "If the State of Louisiana obtains funding and commences construction of the Federal City project proposed for the Naval Support Activity West Bank property on or before September 30, 2008, then relocate Headquarters, Marine Forces Reserve Support Command element of Mobilization Command to that facility on the Naval Support Activity West Bank property, New Orleans, LA. If the State of Louisiana fails to construct an appropriate Federal City facility on or before September 30, 2008, then relocate Marine Corps Reserve Support Command element of Mobilization Command to Naval Air Station Joint Reserve Base New Orleans, LA".

Forces Reserve. Retain an enclave for the 9th Marine Corps District and the 24th Marine Regiment.

92. Andrews Air Force Base, MD, Will Rogers Air Guard Station, OK, Tinker Air Force Base, OK, and Randolph Air Force Base TX (AF 23)

- c. **Realign Andrews Air Force Base, MD**, by relocating the Air Force Flight Standards Agency (AFFSA) and its two C-21 aircraft to Will Rogers World Airport Air Guard Station, OK.
- d. **Realign Randolph Air Force Base, TX**, by relocating the USAF Advanced Instrument School (AIS) to Will Rogers Air Guard Station.
- e. **Realign Tinker Air Force Base, OK**, by relocating the Global Air Traffic Operations Program Office (GATOPO) to Will Rogers Air Guard Station.
- f. **Realign Will Rogers Air Guard Station** by relocating the 137th Airlift Wing (ANG) to Tinker Air Force Base and associate with the 507th Air Refueling Wing (AFR). Distribute the 137th Air Airlift Wing (ANG)'s C-130 aircraft to meet the Primary Aircraft Authorizations (PAA) requirements established by the Base Closure and Realignment recommendations of the Secretary of Defense, as amended by the Base Closure and Realignment Commission.

If the State of Okalahoma decides to change the organization, composition and location of the 137th Wing (ANG) to integrate the unit into the Future Total Force, all other personnel allotted to the 137th Wing (ANG) will remain in place and assume a mission relevant to the security interests of the State of Okalahoma and consistent with the integration of the unit into the Future Total Force, including but not limited to air mobility, C4ISR, Information Operations, engineering, flight training or unmanned aerial vehicles. Where appropriate, unit personnel will be retrained in skills relevant to the emerging mission.

This recommendation does not effect a change to the authorized end-strength of the Okalahoma Air National Guard. The distribution of aircraft currently assigned to the 137th Wing (ANG) is based upon a resource-constrained determination by the Department of Defense that the aircraft concerned will better support national security requirements in other locations and is not conditioned upon the agreement of the state.

- o Establish 8 PAA C-130 aircraft at the 136th Airlift Wing ANG, Naval Air Station Joint Reserve Base Fort Worth, TX.
- o Establish 10 PAA C-130 aircraft at the 139th Airlift Wing (ANG), Rosecrans Memorial Airport Air Guard Station, MO.⁵

↑ FROM []
INC 8 TO 10 C-130/

⁵ By Motion 92-4A, the Commission struck the language, "The 137th's C-130H aircraft are distributed to the 136th Airlift Wing (ANG), Naval Air Station Joint Reserve Base Fort Worth, TX (4 aircraft), and 139th Airlift Wing (ANG), Rosecrans Memorial Airport Air Guard Station, MO (4 aircraft)." and insert in its place, "Distribute the 137th Air Airlift Wing (ANG)'s C-130 aircraft to meet the Primary Aircraft Authorizations (PAA) requirements established by the Base Closure and Realignment recommendations of the Secretary of Defense, as amended by the Base Closure and Realignment Commission.

If the State of Okalahoma decides to change the organization, composition and location of the 137th Wing (ANG) to integrate the unit into the Future Total Force, all other personnel allotted to the 137th Wing (ANG) will remain in place and assume a mission relevant to the security interests of the State of Okalahoma and consistent with the integration of the unit into the Future Total Force, including but not

The 137th Airlift Wing's Expeditionary Combat Support remains in place at Will Rogers Air Guard Station, Oklahoma.⁶

28. Reserve Component Transformation in Missouri (Army 58).⁷

- a. **Close the United States Army Reserve Center in Greentop, MO**, and relocate units to a new United States Army Reserve Center in Kirksville, MO, if the Army is able to acquire suitable land for the construction of the facilities.
- b. **Close the Jefferson Barracks United States Army Reserve Center**, and re-locate units into a new consolidated Armed Forces Reserve Center on Jefferson Barracks, MO, if the Army is able to acquire suitable land for the construction of the facilities. The new AFRC shall have the capability to accommodate Missouri Army National Guard Units from the Readiness Center in Jefferson Barracks if the State of Missouri decides to relocate those units.

91. New Orleans Air Reserve Station, LA (AF 22)

- a. **Realign NAS New Orleans ARS, LA.** Distribute the 15 A-10 aircraft assigned to the 926th Fighter Wing (AFR) to meet the Primary Aircraft Authorizations (PAA) requirements established by the Base Closure and Realignment recommendations of the Secretary of Defense, as amended by the Defense Base Closure and Realignment Commission.
 - o Establish 24 PAA A-10 at the 442^d Fighter Wing (AFR), Whiteman Air Force Base, Missouri
 - o Establish 24 PAA A-10 at the 917th Wing (AFR) at Barksdale Air Force Base, Louisiana.⁸

limited to air mobility, C4ISR, Information Operations, engineering, flight training or unmanned aerial vehicles. Where appropriate, unit personnel will be retrained in skills relevant to the emerging mission.

This recommendation does not effect a change to the authorized end-strength of the Oklahoma Air National Guard. The distribution of aircraft currently assigned to the 137th Wing (ANG) is based upon a resource-constrained determination by the Department of Defense that the aircraft concerned will better support national security requirements in other locations and is not conditioned upon the agreement of the state.

- o "Establish 8 PAA C-130 aircraft at the 136th Airlift Wing ANG, Naval Air Station Joint Reserve Base Fort Worth, TX.

- o Establish 10 PAA C-130 aircraft at the 139th Airlift Wing (ANG), Rosecrans Memorial Airport Air Guard Station, MO."

⁶ By Motion 92-4A, the Commission struck the language, "The aerial port squadron at Will Rogers moves to Naval Air Station Joint Reserve Base Fort Worth, the Aeromedical Squadron and fire fighters move to Rosecrans AGB. Other elements of the 137th Wing's Expeditionary Combat Support remain in place at Will Rogers." and inserted in its place the language "The 137th Airlift Wing's Expeditionary Combat Support remains in place at Will Rogers Air Guard Station, Oklahoma."

⁷ By Motion G-11-1, the Commission found the recommendation of the Secretary of Defense consistent with the Final Selection Criteria and Force Structure Plan.

⁸ By Motion 91-4A, the Commission struck the language "Distribute the 926th Fighter Wing's A-10 aircraft to the 442^d Fighter Wing (AFR), Whiteman Air Force Base, MO (nine aircraft); and the 917th Wing (AFR) at Barksdale Air Force Base, LA (six aircraft)." and inserted in its place "Distribute the 15 A-10 aircraft assigned to the 926th Fighter Wing (AFR) to meet the Primary Aircraft Authorizations (PAA) requirements

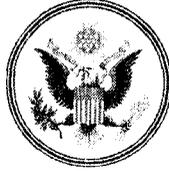
The 926th Wing HQ element⁹ realigns to Nellis Air Force Base, NV and the wing Expeditionary Combat Support realigns to Buckley Air Force Base, CO.

established by the Base Closure and Realignment recommendations of the Secretary of Defense, as amended by the Defense Base Closure and Realignment Commission.

- Establish 24 PAA A-10 at the 442^d Fighter Wing (AFR), Whiteman Air Force Base, Missouri;
- Establish 24 PAA A-10 at the 917th Wing (AFR) at Barksdale Air Force Base, Louisiana.”

⁹ By Motion 91-4A, the Commission struck the language “The 442^d Wing HQ element” and inserted in its place “The 926th Wing HQ element”.

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NOTES/COMMENTS:

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION (BRAC)

FINAL DELIBERATIONS

Friday, August 26, 2005

7:00 p.m.

Evening Session

Hyatt Regency Crystal City
2799 Jefferson Davis Highway
Arlington, Virginia 22202

COMMISSIONERS:

The Honorable Anthony J. Principi, Chairman

The Honorable James H. Bilbray

The Honorable Philip E. Coyle III

Admiral Harold W. Gehman, Jr., USN (Ret.)

The Honorable James V. Hansen

General James T. Hill, USA (Ret.)

General Lloyd W. Newton, USAF (Ret.)

The Honorable Samuel K. Skinner

Brigadier General Sue Ellen Turner, USAF (Ret.)

CHAIRMAN:

THE HONORABLE ANTHONY J. PRINCIPI

before us three motions, which implement the laydown the staff has recommended for F-15 aircraft. These are contained in Tab 3, 94, Otis Airport, Air Guard Base, Maine, Air Force 25. Number 108, Portland International Airport, Air Guard Station, Oregon, Air Force, 41. Number 98, Great Falls International Airport, Air Guard Station, Montana, Air Force 30. Are there any questions?

Mr. Cirillo: I believe there's one more.

Chairman Principi: Okay. Let me add to this grouping, and additional motion. Number 89, Mountain Home Air Force Base, Nellis Air Force Base, and Elmendorf Air Force Base, that is contained as - what's the motion number on that? Excuse me. 89-4(a), 89-4(a).

Mr. Bilbray: Mr. Chairman, how do we want to handle it on 89, these are planes that effect Nellis Air Force Base, Nevada. And I have to recuse myself from that.

Chairman Principi: Can we record your vote as a recusal for Nellis Air Force Base.

Ms. Sarkar: Mr. Chairman, one option you may want to consider, is to vote on Motion number 89-4(a) separately.

Mr. Bilbray: That's fine with me.

Chairman Principi: So we should vote on Nellis Air Force Base separately?

Ms. Sarkar: It's at your option, Mr. Chairman.

Chairman Principi: Okay. We'll do it that way, all

right. I will move the approval of the staff recommendation. Number 94, 98, 108, and 89, with the exception of Nellis Air Force Base. Again, 94, 108, 98, and 89 with the exception of Nellis Air Force Base.

Mr. Bilbray: Mr. Chairman, I think what the Council is advising is that Section 89, just be voted on separately because they're all kind of intertwined. And that we vote on 94, 108 and 98.

Chairman Principi: Very well, Congressman Bilbray, we'll do that. So I would move the approval of the staff recommendations for number 94, 98, and 108. Is there a second?

Admiral Gehman: Second.

Chairman Principi: Are there any recusals?

General Newton: Mr. Chairman, when you get to the discussion I would like to make a comment please.

Chairman Principi: Certainly. All in favor?

Ms. Sarkar: Pardon me, Mr. Chairman was there a second?

Admiral Gehman: Yes, I seconded.

Chairman Principi: Is there any discussion?

General Newton: Thank you Mr. Chairman. Mr. Chairman, I wanted to say a comment on number 108-4, which is Portland International. Portland International Airport, Air Guard Station in Oregon. If you will notice that the

Department and the Secretary recommend that those aircraft be removed. The study by the staff, and the Commissioners who visited the North West and our regional hearings that we had in that area, clearly pointed out to us that the community was concerned about National Security, Homeland Security, and Homeland Defense. And after studying that, we saw where the staff recommended that criteria number 1, had been deviated from and therefore they recommended that we place aircraft back out at Portland Air Force Base, or Portland International Airport. And that's why you will note that we went from 0 to 15.

Chairman Principi: Thank you.

General Newton: I would also like to note Mr. Chairman that Barnes in Massachusetts also has F-15s. If you remember there were quite a bit of discussion about the North East and that the recommendations from the Secretary left the North East void of the capability to respond to a possible threat in that area. Air threats, in that area. And these aircraft and this location provided that opportunity. And so it was a staff recommendation that placing these airplanes at Barnes, and transitioning them to F-15s vice the Secretary's recommendation would be a better fit. And as a result that's why that proposal is there.

Chairman Principi: Admiral Gehman?

Admiral Gehman: Since General Newton's on a roll here, let me just continue with Great Falls, Montana. Which the DRD recommendation had removing the F-16s and enclaving Great Falls. When we get to F-16s you will find that we recommend taking the F-16s out of Great Falls, but this recommendation puts F-15s in Great Falls. Essentially for the same reason General Newton just talked about.

Chairman Principi: Indeed.

Mr. Small: Mr. Chairman.

Chairman Principi: This is Ken Small.

Mr. Small: Just as an observation sir, you have already considered and voted on Motion 108-4. That was one of the first group, first line that appeared under the tanker distribution.

Chairman Principi: We will vote it again, thank you Mr. Small. Okay. I will move the approval of the staff recommendations for Motions 94-4(a), 108-4(a), and 98-4(a). Do I hear a second?

Admiral Gehman: Second.

Chairman Principi: All in favor?

[A show of nine hands].

Chairman Principi: All opposed?

[No response].

Ms. Sarkar: Mr. Chairman, the vote is unanimous, therefore the motion is approved. Thank you.

Chairman Principi: I will now move the approval of Motion 89-4(a), Mountain Home Air Force Base, Nellis Air Force Base, and Elmendorf Air Force Base. Is there a second?

Mr. Coyle: Second.

Chairman Principi: Are there any recusals?

[A show of one hand].

Chairman Principi: All in favor?

[A show of eight hands].

Chairman Principi: All opposed?

[No response].

Ms. Sarkar: Mr. Chairman, the vote is eight in favor, none opposed, one abstention, the motion is approved.

Thank you.

Chairman Principi: Okay. We will take a very short 10 minute break to update the balance of the Tabs, and motions in the Commissioner's binders and we will proceed as soon as we complete that. I think this process is going along very well. My compliments to the staff, and to counsel for truly organizing this in a manner that is easy to understand and allows us to truly see what we're voting on, so we will recess for 10 minutes.

[Recess]

Chairman Principi: The hearing will come to order. We have before us 13 motions which implement the laydown

the staff has recommended for F-16 aircraft. Number 113, Hill Air Force Base, Utah AF47. Number 107, Springfield, Beckly Municipal Airport, Air Guard Station, Ohio, Air Force 40. 89, Mountain Home Air Force Base, Idaho, Air Force 18. Number 115, Richmond International Airport, Air Guard Station, Virginia.

Mr. Small: Mr. Chairman, I would just like to note this is the organization that's aligning itself with the F-22s at Langley.

Chairman Principi: Thank you, that's good to know. Number 98, Great Falls International Airport, Air Guard Station, Montana, Air Force 30.

Mr. Small: This was a redistribution to put the F-15s in Montana, it's an excellent place for them, sir.

Chairman Principi: Number 94, Otis Air National Guard Base, Air Force 25. Number 95, WK Kellogg Airport Air Guard Station, Michigan, Air Force 27.

Mr. Skinner: Mr. Chairman, that's not an F-16 Base, do we need something there?

Mr. Small: Gentlemen, and General Turner, you have voted on Kellogg previously when you considered the A-10s. I'm sorry sir.

Mr. Skinner: Go ahead. I think it's completed, action's been taken on it.

Mr. Small: Yes sir, to my understanding, I've

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

| | | |
|---|---|---------------------|
| STATE OF MISSOURI, ex rel. |) | |
| JEREMIAH W. (JAY) NIXON, |) | |
| Attorney General of the State of Missouri |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 05-CV-01387-JCH |
| |) | |
| DONALD H. RUMSFELD, in his official |) | |
| capacity as Secretary of the Defense of the |) | |
| United States; ANTHONY J. PRINCIPI, |) | |
| in his official capacity as Chairman of the |) | |
| Defense Base Closure and Realignment |) | |
| Commission; et al. |) | |
| |) | |
| Defendants. |) | |

**STATE'S REPLY MEMORANDUM IN FURTHER SUPPORT
OF ITS MOTION FOR PRELIMINARY INJUNCTION**

The Secretary of Defense (the "Secretary"), and the Defense Base Closure and Realignment Commission (the "BRAC Commission"), have abused their authority under the BRAC Act and attempted to circumvent the Missouri Governor's federal statutory authority to veto any change in organization or allotment of Missouri's Guard units. Defendants virtually concede the former and argue, with respect to the latter, that it was Congress that deprived the Governor of this power even though no express statutory language to that effect exists.

Ultimately, however, the Defendants contend that this Court has no power to remedy these twin statutory violations; now or in the future. But it simply cannot be that the BRAC Commission can violate its own governing statute, and the much older and broader gubernatorial consent statutes, with impunity. The time to restrain these violations is now, at the State's last real opportunity before the outcome of the BRAC process is frozen into law.

At its essence, the State's Complaint makes two separate and unrelated arguments. First, that the changes being sought to the Missouri Air Guard, 131st Fighter Wing, are not the sort of changes that the BRAC process authorizes. The Secretary can make these changes, if he adheres to the governing law (including the requirement of gubernatorial consent), but he cannot use the BRAC process to make them, nor can he use the BRAC process as an end-run around the need for gubernatorial consent. Second, even if the changes being sought to the 131st Fighter Wing could be made within the BRAC process, Defendants still must comply with the requirement of gubernatorial consent that exists in every other circumstance. In an effort to avoid the second argument, the BRAC Commission – and now the Department of Justice attorneys – have run straight into, and effectively concedes, the first argument.

Finally, as for the harm that Missouri will suffer without an injunction, the Justice Department is attempting to construct a catch-22 for the State: coolly suggesting that Missouri will not be prejudiced by having to wait to raise its claims at some later, unspecified time; and then asserting that judicial review of the BRAC Commission's lawlessness cannot ever be had. The duplicity of this argument, alone, is all the showing of imminent harm that the State need make, though the State has offered significantly more in support of this element. Defendants boldly claim that judicial review of their actions will do it great harm, but avoiding judicial review is not an interest that this Court should protect. Accordingly, the State's harm has been established and neither that showing, nor the "balance of equities" analysis, should swing the BRAC Commission's way simply because it might (indeed, will) result in it being prohibited from doing what, by law, the BRAC Commission is not authorized to do. Respectfully, the

Preliminary Injunction should issue, followed quickly by the Permanent Injunction and Declaratory Judgment the State seeks.

I. INTRODUCTION

In their Memorandum in Opposition to Plaintiff's Motion for a Preliminary Injunction ("Defendants' Opposition"), Defendants assert numerous over-lapping and circular arguments in their attempt to defeat the State's Motion. Essentially, however, the BRAC Commission is making two basic contentions – oft-repeated and intertwined throughout Defendants' 41-page brief (the "Defendants' Memorandum in Opposition"). First, Defendants argue that the State has not demonstrated a likelihood of success on the merits of her claims, either because: (1) *Dalton v. Spector* precludes review of the BRAC Commission's recommendations; (2) the gubernatorial consent requirement under 10 U.S.C. §18238 and 32 U.S.C. §104 would frustrate the BRAC process; or (3) such gubernatorial consent is not required when the "realignment" only involves the transfer of equipment with no alleged effect on the unit's existence, mission(s) or personnel. As shown below, however, the presence of the recent decision on substantially similar facts, *Rendell v. Rumsfeld*, No. 05-CV-3563, slip. op. at 9 (E.D. Pa. Aug. 26, 2005) (attached as Exhibit 2 to the State's opening brief), alone, creates at least an adequate showing of probability of success to justify the preliminary injunction. Moreover, Count I of the State's Complaint states a claim having nothing to do with gubernatorial consent and, as shown below, success on that claim has been conceded by the BRAC Commission itself.

Second, the Defendants argue that the State has failed to show any imminent harm that will befall it if the injunction does not issue. Defendants argue that any harm the State may suffer as a result of the recommended "realignment" will not occur until the Department of

Defense implements the recommendation, which cannot occur until after the President has accepted the recommendation and Congress has failed to timely reject the recommendation. Here, again, Defendants' brief makes the State's point for it. The Defendants explicitly state that the State's claims can NEVER be reviewed. *See* Defendants' Memorandum in Opposition at 2 (“recommendations of [Defendants] . . . are never subject to review”) *and* at 14 (recommendations “are never subject to judicial review”) (emphases added). According to the Defendants, then, the Secretary and the BRAC Commission are free to draft and accept recommendations that clearly violate the law or constitution, and the State is powerless – both before and after that recommendation becomes law – to obtain judicial relief. Such arguments show that the State faces imminent harm from this "absolute immunity" argument, which will only grow stronger the farther along the BRAC process proceeds.¹

II. ARGUMENT

A. The BRAC Act Does Not Authorize the BRAC Commission's Recommendation Relating to the 131st Fighter Wing – Regardless of Any Amendment.

On August 26, 2005, the BRAC Commission adopted the recommendation effectively dismantling the Missouri Air Guard 131st Fighter Wing. (*See* Exh. 4 to State's opening brief).

¹ After the BRAC Commission sends its report to the President, and the President sends it on to Congress, the recommendations become statutes if Congress does not act to stop the process. *See* BRAC Commission Counsel's Opinion at 5 (attached as Exh. 6 to the State's opening brief). In that event, the Government will no doubt argue that these “new” statutes (including the one addressing the 131st Fighter Wing) trump the “older” and “more general” statutes that require gubernatorial consent. *Id.* at 8. Thus, the Government may well succeed in blocking any review at any time, unless the Court issues a Preliminary Injunction now to freeze the *status quo*.

This recommendation strips the 131st of all of its aircraft, and the recommendation was justified by the Air Force's estimate that 249 jobs would be directly eliminated at the 131st, and thus substantial cost savings would be achieved.² Now, the Government asserts that the BRAC Commission actually passed an entirely different recommendation, the text of which is set out in Defendants' Memorandum in Opposition at 7-8, and in their Exhibit B. This recommendation continues to require that the 131st Fight Wing lose all of its aircraft, but concludes that the "recommendation does not effect a change to the authorized end-strength of the Missouri Air National Guard." This amendment, if actually adopted,³ is obviously the result of the BRAC Commission's attempt to sidestep the import of the Pennsylvania decision. Nevertheless, both the original recommendation and the "amended" recommendation, fall far outside the type of changes authorized by the BRAC Act.

For the most part, the Secretary of Defense has the authority – subject to other statutes such as 32 U.S.C. § 104(c) which requires gubernatorial consent for any "change in the branch,

² The justification of estimated savings was immediately denounced as fictitious. *See* Opinion of BRAC Counsel at pp. 2-3 n. 8 (attached as Exh. 4 to the State's opening brief) (noting the Congressional Budget Office's determination that the Air Force's personnel savings projections were inflated because the affected Air Guard units are "expected to continue to exist at the same manpower levels as it does today.").

³ The State does not concede that Recommendation 94, regarding Missouri's 131st Fighter Wing, was amended in the manner suggested in Defendants' Memorandum in Opposition. As noted in Exh. 4 to the State's opening brief (and attachments thereto), the BRAC Commission approved the recommendation regarding the 131st Fighter Wing without amendment. *See* Preliminary Transcript Hearing August 26, 2005 (found at http://www.brac.gov/docs/UncertifiedTranscript_26AugAM.pdf), at pp.149-54). Language such as Defendants now claim was amended into the 131st Fighter Wing recommendation was amended into other recommendations during the hearing, *see id.* at pp. 145-48 (*re*: W.K. Kellogg Air Guard Station and its 110th Fighter Wing), but there was no such amendment when the recommendation for the 131st Fighter Wing was voted upon.

organization, or allotment of a unit" – to move equipment and close or realign military installations without going through the BRAC process. 10 U.S.C. 2909(c)(2). But, if the military installation being closed is one at which 300 civilians or more are authorized to be employed, the BRAC process must be used. 10 U.S.C. § 2687(a)(2). Similarly, if the "realignment" of a military installation reduces the number of civilian personnel by 50% or 1,000, then the BRAC process must be used. 10 U.S.C. § 2687(a)(3).

The BRAC Act defines a "realignment" as "any action which both reduces and relocates functions and civilian personnel positions[" 10 U.S.C. § 2687(e)(3) (Base Closure Act § 2910(5)) (emphasis added). Thus, "realignments" under the BRAC Act refer to changes in installations, *i.e.*, bases, not to units or equipment. *See* Opinion of BRAC Commission's Counsel (attached Exh. 6 to the State's opening brief).⁴ Accordingly, for the proposed "realignment" of Missouri's 131st Fighter Wing actually to qualify as a "realignment" under BRAC, it must reduce and relocate functions at Lambert, and relocate more than half of the civilian positions authorized at Lambert. The recommendation regarding the 131st Fighter Wing does not meet this test.

Here, again, Defendants concede the dispositive fact: "If the recommendation [regarding the 131st Fighter Wing] is approved by the President and not rejected by Congress, therefore, the 131st, and its personnel, will be left in place." Defendants' Memorandum in Opposition at p. 8

⁴ Ultimately, the BRAC Committee's counsel reached the very same conclusion being urged by the State in this case: "The purpose of the Act is to close or realign excess real estate and improvements that create an unnecessary drain on the resources of the Department of Defense. The Base Closure Act is not a vehicle to effect changes to how a unit is equipped or organized. *See* Memorandum of the BRAC Commission's Counsel (attached as Exh. 6 to the State's opening brief) at 10 (emphasis added).

(emphasis added). *Cf.* Opinion of BRAC Counsel at pp. 2-3 n. 8 (attached as Exh. 4 to the State's opening brief) (noting the Congressional Budget Office's determination that the Air Force's personnel savings projections were inflated because the affected Air Guard units are "expected to continue to exist at the same manpower levels as it does today.").

The fact that the Air Force recommendation concerning the 131st Fighter Wing was intended solely to move aircraft, and not functions and personnel, was clear enough in the language of Air Force Recommendation 25, BRAC Bill Chapter III, Section 94. But, the "amended" recommendation that Defendants' counsel contends the BRAC Commission adopted drives this point home so that it cannot be missed or misunderstood: "This recommendation does not effect a change to the authorized end-strength of the Missouri Air National Guard." (attached as Exh. B to Defendants' Memorandum in Opposition).

Accordingly, the admission in Defendants' brief, the language of the Air Force's recommendation, the Congressional Budget Office's determination, and the recommendation adopted by the BRAC Commission (whether amended or not), establish beyond any doubt that the recommendation regarding the 131st Fighter Wing does not constitute a "realignment" within the BRAC context because it has no effect on personnel. Thus, Count I of the State's Complaint, *see* Complaint, Count I, at ¶ 29, not only is substantially likely to succeed, it is certain to succeed on this overwhelming proof.

B. *Dalton v. Spector* Does Not Preclude Judicial Review

Defendants argue that the State has failed to establish a likelihood of success on the merits because *Dalton, v. Spector*, 511 U.S. 462 (1994), precludes judicial review of the BRAC process. *See* Defendants' Opposition Memorandum at 17-25. This contention was raised by the

United States in the *Rendell* case only a few days ago, and was expressly and soundly rejected by Judge Padova. See *Rendell* slip op., at 28-37 (attached as Exh. 2 to the State's opening brief). Specifically, Judge Padova ruled that the agency action being challenged was "sufficiently final to be subject to judicial review[,]" *id.* at p. 32, and though the Department may have discretion in the areas of force-structure plans and excess infrastructure, such discretion does not allow it to violate federal law, *id.* at 33, and "the structure, objectives, and legislative history of the BRAC Act do not prohibit judicial review of the legality" of the Department's recommendation, *id.* at 37.

An additional reason why *Dalton* does not preclude judicial review in this case is the fact that in *Dalton*, no party challenged the assumption that the Department and the BRAC Commission had the statutory authority to make the recommendation, and that the President had the statutory authority to make the decision. At issue was whether the President had properly exercised his discretionary authority. In contrast, this case involves a situation where there are specific federal statutes which expressly prohibit the Department, the BRAC Commission and the President from taking certain action (*i.e.* changing the branch, organization or allotment of a military unit located entirely within the State of Missouri without the approval of the Governor.) Thus, by operation of federal law, neither the Secretary, BRAC, nor the President have authority, discretionary or otherwise, to take such action. *Dalton*'s holding simply does not extend to such situations.

C. Gubernatorial Consent Requirement Does Not Frustrate BRAC

In attempting to show that the State will not prevail on the merits, Defendants repeatedly argue that the relief requested by the State would wreak havoc on the entire BRAC process,

which was designed to close military bases in a rational and timely manner. Accordingly, Defendants want the Court to construe the two gubernatorial consent provisions as inapplicable to BRAC process or implicitly repealed by the BRAC Act.⁵ See Defendants' Memorandum in Opposition at 33-38. However, because gubernatorial consent is consistent with the BRAC process, both factually and legally, this argument is meritless.⁶

First, the idea that the Department and the Governors, principally through their Adjutants General, must work together on matters relating to State National Guard units is neither novel nor radical. The National Guard Bureau was established precisely for this purpose. The National Guard Bureau occupies the crossroad between State and federal military interests, and since its inception the NGB has well served its intended function as the sole conduit of communication and facilitator of cooperation between the Department and the States. In their memorandum,

⁵ When the case proceeds to the merits, this "implicit repeal" argument will not survive long. The Supreme Court has recently confirmed that it "do[es] not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to imply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest." *Jama v. Immigration and Customs Enforcement*, 123 S. Ct. 694, 700 (2005). In passing the BRAC Act, Congress explicitly stated which other statutes were repealed or superseded.. See, e.g., BRAC Act at § 2905(b). The gubernatorial consent requirements of 32 U.S.C. 104(c) were not included.

⁶Implicit in Defendants' argument is the presumption that they should be able to effectively eliminate the 131st Fighter Wing *easily, efficiently and without encountering any resistance*. Apart from the specific gubernatorial consent statute, the Defendants' aspiration ignores the fact that part of the genius of federalism is that the relationship between States and the federal government can be, by design, inefficient, frictional and unwieldy. See, e.g., *Trimble v. Gordon*, 430 U.S. 762, 777-78 (1977) (describing the "system of checks and balances conveniently lumped under the descriptive head of 'federalism'") (Rehnquist, J., dissenting); *SEPTA v. American Coastal Indus., Inc.*, 682 F. Supp. 285, 288 (E.D. Pa. 1988) (inefficiency "may be a necessary price we pay for the benefits of 'our federalism'").

Defendants ignored that fact of – and throughout this case the Department has never acknowledged the critical role of – its own National Guard Bureau.

Defendants also ignores the fact that the Department, at least the Department of the Army, *already* solicits Adjutant General advice and approval for BRAC recommendations. At the August 11, 2005 hearing of the BRAC Commission, focusing on “Department of Defense Closure and Realignment Recommendation Impacts on Homeland Security/Defense and on Units of the Air National Guard,” BRAC Commissioner Philip Coyle observed that, in contrast to the Air Force’s unilateral approach throughout the 2005 BRAC Round, “*the Adjutants General for 39 states signed off on the Army BRAC proposals.*” Transcript of August 11, 2005 BRAC Commission Hearing, p. 78, lines 8-9 (can be found at <http://www.brac.gov/hearingInfo.asp>). In light of the Army’s own practice of seeking Adjutant General “sign off” on its BRAC recommendations, Defendants’ complaint about how allegedly burdensome it is to obtain gubernatorial approval rings hollow.

The Department’s argument that enforcement of the gubernatorial consent requirement would upset the entire BRAC process is also legally incorrect. The gubernatorial consent requirement in 32 U.S.C. § 104(c) is very narrow, encompassing only actions that would change the branch, organization or allotment of a National Guard unit located entirely within a State.

The Department need not obtain gubernatorial consent for every action that has any impact on a State National Guard unit, so long as those actions fall short of changing the branch, organization or allotment of the unit. Plaintiffs recognize and readily accept that as a dual State and federal entity, the 131th Fighter Wing is practically and legally subject to many Missouri National Guard *and* Department of Defense decisions that affect its members and operation.

Gubernatorial consent is not required with respect to many of those day-to-day decisions and actions. However, Congress has determined that the federal government may not effectively eliminate a unit's very existence or nature without obtaining the approval of the other sovereign (the State) to which it belongs. That protection is all that the State seeks to enforce through this action.

D. The State Has Demonstrated Imminent Harm Should the Injunction Not Issue, and Defendants' "Ripeness" Argue Actually Proves the Point.

Defendants contend that the State's claims are not ripe because any harm resulting from the BRAC process will not be felt until the recommendations are actually implemented. As a result, Defendants argue that the State cannot show any irreparable harm that will befall it if the preliminary injunction is not issued. Defendants also raise "ripeness" in attacking the merits of the State's claims. *See* Defendants' Opposition Memorandum at 10-14, 25-28. No matter how it is framed, however, this argument does nothing except expose Defendants' plan to preclude any judicial review at any time on any ground – including the Secretary's and the BRAC Commission's own violations of law. This argument should not detain the Court long because precisely the same argument was made to – and rejected by – Judge Padova as part of his holding in the *Rendell* case that the State's claims were in fact ripe for adjudication. *See Rendell Slip Op.* at 24-27 (attached as Exh. 2 to the State's opening brief). Here, as in Pennsylvania, the State is seeking a declaratory judgment which, by its nature, is sought prior to the completion of the injury. *Id.* at 24.

Moreover, the State's request for a preliminary injunction could not be more timely in that such relief is designed to prevent future harm. *See United Healthcare Ins. Co v. Advance*

PCS, 316 F.3d 737, 741 (8th Cir. 2002). As Defendants correctly point out, the “single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.” *Id.* at 12-13 (*quoting* 11 C. Wright & A Miller, *Federal Practice and Procedure* § 2948, at 431 (1973)).

Defendant’s “ripeness” claim is merely a left jab of a two-punch combination intended to knock the State and its claims out of court forever. First, as noted previously, Defendants claim that the Secretary’s and the BRAC Commission’s recommendations cannot be challenged prior to action by the President and inaction by Congress. The argument seems innocuous enough, and would ring somewhat true if we were in an ordinary “agency action” analysis. But, that argument is followed by a roundhouse to the jaw because Defendants’ second argument is that the State cannot challenge the President’s actions, and the resulting 2005 BRAC statutes will implicitly repeal any previous statutory requirement, including the requirement of gubernatorial consent. *See* BRAC Counsel’s Opinion at 8 (attached as Exh. 6 to State’s opening brief).

This second punch, a sucker punch, demonstrates the cruelly circular nature of Defendants’ varying arguments; namely that the State’s claims are not ripe at any point during the BRAC process, and will be instantly moot the moment the BRAC process concludes. Accordingly, although the State will litigate the validity of the second argument later if it has to, the mere fact that the argument is even being asserted by the Defendants is a sufficient showing of the potential for imminent harm if this Court does not restrain the BRAC Commission’s September 8th delivery of its recommendations to the President.

If the injunction is not issued, the State's opportunity for any meaningful judicial review of the legality of the BRAC Commission's recommendations may well be eliminated or, at least, put at substantial and avoidable risk. For this reason, the Court should issue the injunction to maintain the status quo until such time as there can be a final adjudication on the merits. *See Ferry-Morse Seed Co. v. Food Corn Inc., 729 F.2d 589, 593 (8th Cir. 1984)*(preliminary injunction designed to maintain status quo so that after a final hearing it can grant full effective relief).

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant the State's Motion for a Preliminary Injunction.

Respectfully submitted,

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Attorneys for Plaintiff

Sarkar, Rumu, CIV, WSO-BRAC

From: Andrew.Tannenbaum@usdoj.gov
Sent: Monday, September 05, 2005 5:28 PM
To: jimenezf@dodgc.osd.mil; alys@dodgc.osd.mil; eastonr@dodgc.osd.mil;
Paul.Clark@pentagon.af.mil; John.Carr@pentagon.af.mil; Laurence.Soybel@pentagon.af.mil;
Steven.Rogers@pentagon.af.mil; Douglas.Heady@pentagon.af.mil;
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rumu.sarkar@wso.whs.mil; bayern@dodgc.osd.mil
Cc: Carl.Nichols@usdoj.gov; Jody.Hunt@usdoj.gov; Matthew.Lepore@usdoj.gov;
Alexander.Haas@usdoj.gov; Jeffrey.Smith5@usdoj.gov
Subject: RE: BRAC -- MO stipulation

The MO AG's office would like to change paragraph 9 in the joint stipulation

FROM:

9. To date, the Missouri Air National Guard has not, as the result of the ongoing BRAC process, received or issued any orders to: relocate the fifteen F-15C aircraft assigned to the 131st Fighter Wing; relocate any personnel assigned to the 131st Fighter Wing; make any changes to the branch, organization, or allotment of the 131st Fighter Wing; or to relocate or withdraw the 131st Fighter Wing.

TO:

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Any comments on this proposed change? Should we not state that the orders "will issue" if the President approves and Congress does not reject the recommendations, or is there no real way to avoid that?

-----Original Message-----

From: Tannenbaum, Andrew (CIV)
Sent: Sunday, September 04, 2005 1:42 PM
To: 'bayern@dodgc.osd.mil'; 'jimenezf@dodgc.osd.mil'; 'alys@dodgc.osd.mil';
'eastonr@dodgc.osd.mil'; 'Paul.Clark@pentagon.af.mil'; 'John.Carr@pentagon.af.mil';
'Laurence.Soybel@pentagon.af.mil'; 'Steven.Rogers@pentagon.af.mil';
'Douglas.Heady@pentagon.af.mil'; 'David.Hoard@pentagon.af.mil'; 'vannessj@dodgc.osd.mil';
'rumu.sarkar@wso.whs.mil'; 'David.Hague@wso.whs.mil'
Cc: Nichols, Carl (CIV); Hunt, Jody (CIV); Lepore, Matthew (CIV); Haas, Alexander (CIV);
Smith, Jeffrey (CIV)
Subject: BRAC -- MO stipulation
Importance: High

Here are our revisions to the proposed joint stipulation, which reflect all comments received thus far. I am also attaching a red-lined version showing changes from the version plaintiff proposed. We'll need to get this to plaintiff's counsel ASAP, so any further comments or changes will have to be made within the next couple of hours.

Sarkar, Rumu, CIV, WSO-BRAC

From: Andrew.Tannenbaum@usdoj.gov
Sent: Monday, September 05, 2005 7:08 PM
To: Andrew.Tannenbaum@usdoj.gov; Carl.Nichols@usdoj.gov; vannessj@dodgc.osd.mil; eastonr@dodgc.osd.mil; alys@dodgc.osd.mil; jimenezf@dodgc.osd.mil; bayertn@dodgc.osd.mil; rumu.sarkar@wso.whs.mil; David.Hague@wso.whs.mil; David.Hoard@pentagon.af.mil; Douglas.Heady@pentagon.af.mil; Steven.Rogers@pentagon.af.mil; Laurence.Soybel@pentagon.af.mil; John.Carr@pentagon.af.mil; Paul.Clark@pentagon.af.mil
Cc: Matthew.Lepore@usdoj.gov; Jody.Hunt@usdoj.gov; Jeffrey.Smith5@usdoj.gov; Alexander.Haas@usdoj.gov
Subject: RE: BRAC -- MO stipulation

After discussing our concerns below, plaintiff's counsel agreed to remove the second sentence of their proposed para. 9, which now simply reads:

"To date, the Missouri Air National Guard has not, as the result of the ongoing BRAC process, received or issued any orders to relocate the fifteen F-15C aircraft assigned to the 131st Fighter Wing or any personnel assigned to the 131st Fighter Wing."

-----Original Message-----

From: Nichols, Carl (CIV)
Sent: Monday, September 05, 2005 6:54 PM
To: 'bayertn@dodgc.osd.mil'; Tannenbaum, Andrew (CIV); 'jimenezf@dodgc.osd.mil'; 'alys@dodgc.osd.mil'; 'eastonr@dodgc.osd.mil'; 'Paul.Clark@pentagon.af.mil'; 'John.Carr@pentagon.af.mil'; 'Laurence.Soybel@pentagon.af.mil'; 'Steven.Rogers@pentagon.af.mil'; 'Douglas.Heady@pentagon.af.mil'; 'David.Hoard@pentagon.af.mil'; 'vannessj@dodgc.osd.mil'; 'David.Hague@wso.whs.mil'; 'rumu.sarkar@wso.whs.mil'
Cc: Lepore, Matthew (CIV); Hunt, Jody (CIV); Smith, Jeffrey (CIV); Haas, Alexander (CIV)
Subject: Re: BRAC -- MO stipulation

That's my view too -- I meant to communicate that to this group, but realize I sent it just to the DOJ folks.

-----Original Message-----

From: bayertn@dodgc.osd.mil <bayertn@dodgc.osd.mil>
To: Tannenbaum, Andrew (CIV) <ATannenb@CIV.USDOJ.GOV>; jimenezf@dodgc.osd.mil <jimenezf@dodgc.osd.mil>; alys@dodgc.osd.mil <alys@dodgc.osd.mil>; eastonr@dodgc.osd.mil <eastonr@dodgc.osd.mil>; Paul.Clark@pentagon.af.mil <Paul.Clark@pentagon.af.mil>; John.Carr@pentagon.af.mil <John.Carr@pentagon.af.mil>; Laurence.Soybel@pentagon.af.mil <Laurence.Soybel@pentagon.af.mil>; Steven.Rogers@pentagon.af.mil <Steven.Rogers@pentagon.af.mil>; Douglas.Heady@pentagon.af.mil <Douglas.Heady@pentagon.af.mil>; David.Hoard@pentagon.af.mil <David.Hoard@pentagon.af.mil>; vannessj@dodgc.osd.mil <vannessj@dodgc.osd.mil>; David.Hague@wso.whs.mil <David.Hague@wso.whs.mil>; rumu.sarkar@wso.whs.mil <rumu.sarkar@wso.whs.mil>
CC: Lepore, Matthew (CIV) <MLepore@CIV.USDOJ.GOV>; Hunt, Jody (CIV) <JHunt@CIV.USDOJ.GOV>; Smith, Jeffrey (CIV) <jesmith@CIV.USDOJ.GOV>; Nichols, Carl (CIV) <canichol@CIV.USDOJ.GOV>; Haas, Alexander (CIV) <AHAas@CIV.USDOJ.GOV>
Sent: Mon Sep 05 18:36:03 2005
Subject: Re: BRAC -- MO stipulation

I object to the change. It presumes too much about how we may implement. How can you stipulate to the future? That seems to box us in.

CAUTION: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without approval from the Office of the DoD General Counsel.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Andrew.Tannenbaum@usdoj.gov <Andrew.Tannenbaum@usdoj.gov>
To: jimenezf@dodgc.osd.mil <jimenezf@dodgc.osd.mil>; alys@dodgc.osd.mil <alys@dodgc.osd.mil>; eastonr@dodgc.osd.mil <eastonr@dodgc.osd.mil>; Paul.Clark@pentagon.af.mil <Paul.Clark@pentagon.af.mil>; John.Carr@pentagon.af.mil <John.Carr@pentagon.af.mil>; Laurence.Soybel@pentagon.af.mil <Laurence.Soybel@pentagon.af.mil>; Steven.Rogers@pentagon.af.mil <Steven.Rogers@pentagon.af.mil>; Douglas.Heady@pentagon.af.mil <Douglas.Heady@pentagon.af.mil>; David.Hoard@pentagon.af.mil <David.Hoard@pentagon.af.mil>; vannessj@dodgc.osd.mil <vannessj@dodgc.osd.mil>; David.Hague@wso.whs.mil <David.Hague@wso.whs.mil>; rumu.sarkar@wso.whs.mil <rumu.sarkar@wso.whs.mil>; bayertn@dodgc.osd.mil <bayertn@dodgc.osd.mil>
CC: Carl.Nichols@usdoj.gov <Carl.Nichols@usdoj.gov>; Jody.Hunt@usdoj.gov <Jody.Hunt@usdoj.gov>; Matthew.Lepore@usdoj.gov <Matthew.Lepore@usdoj.gov>; Alexander.Haas@usdoj.gov <Alexander.Haas@usdoj.gov>; Jeffrey.Smith5@usdoj.gov <Jeffrey.Smith5@usdoj.gov>
Sent: Mon Sep 05 17:28:25 2005
Subject: RE: BRAC -- MO stipulation

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Cc: Nichols, Carl (CIV); Hunt, Jody (CIV); Lepore, Matthew (CIV); Haas, Alexander (CIV); Smith, Jeffrey (CIV)
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DCN: 12053

version plaintiff proposed. We'll need to get this to plaintiff's counsel ASAP, so any further comments or changes will have to be made within the next couple of hours.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

| | | |
|---|---|---------------------|
| STATE OF MISSOURI, ex rel. |) | |
| JEREMIAH W. (JAY) NIXON, |) | |
| Attorney General of the State of Missouri |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 05-CV-01387-JCH |
| |) | |
| DONALD H. RUMSFELD, in his official |) | |
| capacity as Secretary of the Defense of the |) | |
| United States; ANTHONY J. PRINCIPI,) |) | |
| in his official capacity as Chairman of the |) | |
| Defense Base Closure and Realignment |) | |
| Commission, et al., |) | |
| |) | |
| Defendants. |) | |

JOINT STIPULATION

Plaintiff, the State of Missouri, and Defendants, the Secretary of Defense ("Secretary") and members of the Defense Base Closure and Realignment Commission ("the Commission"), make the following stipulations for the purpose of an expedited presentation of the State's Motion for Preliminary Injunction (and any appellate review thereof) and for no other purposes, and each party reserves the right to contest or demand proof of these facts at any other proceeding or any other stage in this litigation in the future. The

stipulation does not constitute an admission by any party that all of the following facts are relevant or necessary to the Court's consideration of the State's Motion for Preliminary Injunction.

1. The 131st Fighter Wing, an element of the Missouri Air National Guard, is currently assigned fifteen United States F-15C aircraft.

2. The Secretary's recommendation relating to the 131st Fighter Wing delivered to the Commission on May 13, 2005, provided as follows:

Realign Lambert-St. Louis International Airport Air Guard Station, St. Louis, MO. The 131st Fighter Wing's F-15s (15 aircraft) will distribute to the 57th Fighter Wing, Nellis Air Force Base, NV (nine aircraft), and 177th Fighter Wing, Atlantic City International Airport Air Guard Station, NJ (six aircraft). Realign Atlantic City International Airport Air Guard Station, NJ. The 177th Fighter Wing's F-16s will be distributed to the 158th Fighter Wing, Burlington International Airport Air Guard Station, VT (three aircraft), and retire (12 aircraft). The wing's expeditionary combat support (ECS) elements will remain in place. Firefighter positions move to Scott Air Force Base, IL. The 157Air Operations Group (AOG) and the 218th Engineering Installation Group (EIG) will relocate from Jefferson Barracks geographically separated unit (GSU) into space at Lambert International. Jefferson Barracks real property accountability will transfer to the Army.

Department of Defense Base Closure and Realignment Report, Volume I, Part 2 of 2,
page Air Force-25.

3. By motion 94-4A the Commission struck the entire text of the Secretary's
recommendation and inserted in its place the following language:

Realign Lambert-St. Louis International Airport Air Guard Station, St. Louis, MO. Distribute the fifteen F-15 aircraft assigned to the 131st Fighter Wing to meet the Primary Aircraft Authorizations (PAA) requirements established by the Base Closure and Realignment recommendations of the Secretary of Defense, as amended by the Defense Base Closure and Realignment Commission. The 157th Air Operations Group (AOG) and the 218th Engineering Installation Group (EIG) will relocate from Jefferson Barracks geographically separated unit (GSU) into space at Lambert International. Jefferson Barracks real property accountability will transfer to the Army.

If the State of Missouri decides to change the organization, composition and location of the 131st Fighter Wing (ANG) to integrate the unit into the Future Total Force, all other personnel allotted to the 131st Fighter Wing (ANG) will remain in place and assume a mission relevant to the security interests of the State of Missouri and consistent with the integration of the unit into the Future Total Force, including but not limited to air mobility, C4ISR, Information Operations, engineering, flight training or unmanned aerial vehicles. Where appropriate, unit personnel will be retrained in skills relevant to the emerging mission.

This recommendation does not effect a change to the authorized end strength of the Missouri Air National Guard. The distribution of aircraft currently assigned to the 131st Fighter Wing (ANG) is based upon a resource-constrained determination by the Department of Defense that the aircraft concerned will better support national security requirements in other locations and is not conditioned upon the agreement of the state.

Defendants' Exhibit B.

4. There are approximately 1,049 military positions allotted to the 131st
Fighter Wing. At present, the 131st Fighter Wing is staffed by approximately:

- a. 358 full-time support personnel, comprised of 270 military technicians and 88 Active Guard or Reserve,
 - b. 645 "traditional" (*i.e.*, part-time) Guard members, and
 - c. 37 state employees.
5. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense.
6. Since 1996, the 131st Fighter Wing's deployments have included the following: Operation PROVIDE COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB, Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operations NOBEL EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.
7. The 131st Fighter Wing is equipped and capable to go on "Air Sovereignty Alert."
8. The Commission is required by statute to deliver its final report to the President of the United States on or before September 8, 2005, and the Commission (through its counsel) has affirmed that it will not deliver that report prior to that date.

9. To date, the Missouri Air National Guard has not, as the result of the ongoing BRAC process, received or issued any orders to: relocate the fifteen F-15C aircraft assigned to the 131st Fighter Wing; relocate any personnel assigned to the 131st Fighter Wing; make any changes to the branch, organization, or allotment of the 131st Fighter Wing; or to relocate or withdraw the 131st Fighter Wing.

Respectfully submitted,

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Subject: BRAC -- MO -- proposed stipulation

Attachments: stipulation for Preliminary Injunction.wpd; PDF stipulation for Preliminary Injunction.pdf



stipulation for
Preliminary In...

PDF stipulation for
Preliminar...

On the call yesterday with the court, the state of MO first suggested that an evidentiary hearing might be necessary for PI proceedings. We objected, stating that any such factual evidence would be irrelevant to the legal issues regarding the PI. As a compromise, the judge suggested a joint stipulation, a draft of which P's counsel just sent me, and is attached. Please let me know asap if you have any comments. Thanks.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

| | | |
|---|---|---------------------|
| STATE OF MISSOURI, ex rel. |) | |
| JEREMIAH W. (JAY) NIXON, |) | |
| Attorney General of the State of Missouri |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 05-CV-01387-JCH |
| |) | |
| DONALD H. RUMSFELD, in his official |) | |
| capacity as Secretary of the Defense of the |) | |
| United States; ANTHONY J. PRINCIPI,) |) | |
| in his official capacity as Chairman of the |) | |
| Defense Base Closure and Realignment |) | |
| Commission, et al., |) | |
| |) | |
| Defendants. |) | |

**JOINT STIPULATION
FOR PURPOSES OF PRESENTING
THE STATE’S PRELIMINARY INJUNCTION MOTION**

Plaintiff, the State of Missouri, and counsel for Defendants make the following stipulations for the purposes of an expedited presentation of the State’s Motion for Preliminary Injunction (and any appellate review thereof) and for no other purposes, and each party reserves the right to contest or demand proof of these facts at any other proceeding in this litigation in the future:

1. The 131st Fighter Wing, an element of the Missouri Air National Guard, consists of fifteen F-15C aircraft, together with the pilots, technicians and other personnel necessary to make this an effective fighting unit.

2. Exhibit 4 (with attachment) to the State's Suggestions in Support of its Motion for Preliminary Injunction accurately reflects (a) the Department of the Air Force's recommendation relating to the 131st Fighter Wing delivered to the Base Closure and Realignment Commission ("BRAC Commission") by Secretary of Defense Donald Rumsfeld on May 13, 2005, (b) the BRAC Commission's re-phrasing of that recommendation in the Commission's August 23, 2005, draft report, and (c) the unanimous vote of the Commission approving this recommendation is found at pages 152, 154 of the Preliminary Transcript of the Commission's August 26, 2005, hearing, available at http://www.brac.gov/docs/UncertifiedTranscript_26AugAM.pdf.

3. There are 1,049 military positions allotted to the 131st Fighter Wing, and the Wing currently is staffed at nearly 99% of its allotted force. At present, the 131st Fighter Wing is staffed by:

- a. 258 full-time support personnel, comprised of 270 military technicians and 88 Active Guard or Reserve,
- b. 645 "traditional" (*i.e.*, part-time) Guard members, and
- c. 37 state employees.

4. The activities of the 131st Fighter Wing are accurately described in Paragraphs 21 through 23 of the State's Complaint filed August 26, 2005.

5. The BRAC Commission is required by statute to deliver its final report to the President of the United States on or before September 8, 2005, and the Commission (through its counsel) has affirmed that the BRAC Commission will not deliver that report prior to that date.

Respectfully submitted,

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