

SUBJECTS FOR DISCUSSION WITH DEPUTY SECDEF ENGLAND 24 JUNE 2005

REVIEW THE ADDS PROCESS –

- WILL PROVIDE DOD LIST OF POSSIBLE ADDITIONS FOR CONSIDERATION TO THE SECRETARY'S LIST ON JULY 1 OR 2
- WE CONSIDER THE LIST TO BE A WORKING DOCUMENT AND WILL NOT MAKE IT PUBLIC – REQUEST DOD TAKE THE SAME APPROACH
- WILL OFFER OPPORTUNITY FOR THE SECRETARY TO TESTIFY REGARDING THE ADDITIONS ON JULY 18.
- COMMISSION WILL VOTE ON THE ADDITIONS (7 COMMISSIONERS MUST AGREE) ON 19 JULY.
- TWO COMMISSIONERS WILL VISIT THE BASES ADDED FOR CONSIDERATION
- PUBLIC HEARINGS WILL BE HELD TO RECEIVE COMMUNITY INPUT
- CONGRESSIONAL TESTIMONY WILL BE IN LATE JULY
- SECDEF AND CJCS TESTIMONY WILL BE IN MID-AUGUST
- FOLLOWED BY FINAL DELIBERATIONS AROUND AUGUST 23
- REPORT DUE TO THE PRESIDENT ON SEPTEMBER 8.

REVIEW ANG ISSUE: IS DOD VIOLATING THE LAW BY EFFECTING CHANGES TO ANG UNITS WITHOUT CONSULTATION WITH AND APPROVAL OF THE GOVERNORS OF THE STATES WHERE THE UNITS ARE LOCATED?

- WE EXPECT AN OPINION FROM DOJ IN MID-JULY
- DODGC HAS NOT BEEN FORTHCOMING WITH ITS OPINION – WE HAVE ASKED!
- WE HAVE ALSO ASKED THE QUESTION OF DOD VIA THE CLEARING HOUSE (AND RECEIVED A PARTIAL ANSWER TO INCLUDE THERE WAS NO CONSULTATION WITH THE GOVERNORS)
- GOVERNORS AND TAGS APPEAR UNANIMOUS IN THEIR BELIEF THE ANG RECOMMENDATIONS ARE WRONG AND ILLEGAL

- WE EXPECT TO LEARN MORE ABOUT THE ANG ISSUE AT JUNE 30 HEARING IN ATLANTA WHEN THE TAGS AND DHS TESTIFY
- DHS INITIALLY APPEARED HESITANT TO TESTIFY BUT HAVE RECENTLY INDICATED MORE WILLINGNESS

QUICK COMMENTS

- FAST RESPONSES FROM THE CLEARINGHOUSE VERY IMPORTANT TO US
- WE WILL NEED EXPEDITED COBRA RUNS FOR THE ADDED BASES
- ASK THE SECRETARY TO ENCOURAGE SPEEDY RESPONSES TO OUR REQUESTS
- BRAC PROCESS TRULY TRANSPARENT – EVERYTHING GOES ON THE WEB AS SOON AS POSSIBLE AFTER WE RECEIVE IT
- MILITARY AIR SUPPORT HAS BEEN GOOD

Fri BREAKFAST -

Hague, David, CIV, WSO-BRAC

From: Cirillo, Frank, CIV, WSO-BRAC
Sent: Tuesday, June 07, 2005 11:17 AM
To: Hague, David, CIV, WSO-BRAC
Cc: Cook, Robert, CIV, WSO-BRAC
Subject: RE: Chairman meeting with SEC England

_ I am extremely leery about your points - I am redoing another cut

From: Hague, David, CIV, WSO-BRAC
Sent: Tuesday, June 07, 2005 8:25 AM
To: Cirillo, Frank, CIV, WSO-BRAC
Subject: Chairman meeting with SEC England

Frank,

Topics for the Friday meeting between the Chairman and Secretary England:

Reception we are getting at the site visits:

More forthcoming at some locations than others. Sense effort to tow the party line, despite SECDEF assurance given at the public hearings to the effect that the Commission would get full cooperation and support from DoD.

However, the Navy at Norfolk, Portsmouth, New Brunswick, and New London should little hesitation to discuss the pros and cons on the proposed move.

I am told we are getting less openness from the AF and Army.

DoD's position on its ability to effect changes at ANG bases without consultation and consent of governors. We cannot get anything useful on the subject from DoDGC and we have asked DOJ for a formal opinion on the subject. Angst and potential legal issues abound.

Move out of the NE with perceived regional bias for the S and SE. Wisdom of disassociating the military from the NE.

Adds process. Will proceed with informal ontact between Commission and DoD to obtain COBRA runs and other information so that we can make intelligent and well-informed additions for consideration. Process will serve to optimize number of bases formally considered for addition.

Norfolk crowded -- risk of concentration. Danger posed by proximity of container port and LNG facility. Limited harbor access.

Update on our take on the data situation.

Pleased with milair support.

Other? Comments on the above?

David

clearinghouse

*Email to Frank 8/7 about
clearinghouse question he sent.*

Hague, David, CIV, WSO-BRAC

From: Small, Kenneth, CIV, WSO-BRAC
Sent: Friday, July 22, 2005 8:54 AM
To: Battaglia, Charles, CIV, WSO-BRAC; Hague, David, CIV, WSO-BRAC; Cirillo, Frank, CIV, WSO-BRAC; Cook, Robert, CIV, WSO-BRAC; Dinsick, Robert, CIV, WSO-BRAC; 'Ed Brown (edbrown61@verizon.net)'; Hanna, James, CIV, WSO-BRAC; Sillin, Nathaniel, CIV, WSO-BRAC; Van Saun, David, CIV, WSO-BRAC
Cc: Hill, Christine, CIV, WSO-BRAC; Cowhig, Dan, CIV, WSO-BRAC
Subject: RE: Call from Pete Potachney

Interesting thoughts.

Here are mine: on NEPA, if the law is followed, and staffs act with alacrity, even major EISs can be completed in six months and they can be legally bullet proof. I don't subscribe in the general case to using BRAC to avoid NEPA.....while a headquarters can avoid responsibility for a basing decision without respect to NEPA if the decision is dictated by the BRAC Commission, eventually, NEPA must be satisfied before an irrevocable or irreversible action is taken on a major Federal action. So, why should headquarters be allowed to duck the process. If you give me a specific circumstance where a situation needs to happen quickly, I suspect we can find a path to success that is compliant with the existing public law (and that should be a given). By the way, NEPA can be satisfied in a classified arena if necessary, it's a strange animal but complies with the statute and intent of Congress.

On using BRAC to avoid other statutes such as the McKinney Act, I question whether the BRAC Commission should be used to avoid some statutes that serve constituencies that have previously successfully stated their case and concerns sufficiently to get legislation to support the issues stated. Does the BRAC Commission want to legislate other paths to dispose of property, if so, I think that a great deal of backroom work needs to be done to be sure we are right. We want to serve the public, not the private interests.

Ken

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

From: Battaglia, Charles, CIV, WSO-BRAC
Sent: Friday, July 22, 2005 8:26 AM
To: Hague, David, CIV, WSO-BRAC; Cirillo, Frank, CIV, WSO-BRAC; Cook, Robert, CIV, WSO-BRAC; Dinsick, Robert, CIV, WSO-BRAC; 'Ed Brown (edbrown61@verizon.net)'; Hanna, James, CIV, WSO-BRAC; Sillin, Nathaniel, CIV, WSO-BRAC; Small, Kenneth, CIV, WSO-BRAC; Van Saun, David, CIV, WSO-BRAC
Cc: Hill, Christine, CIV, WSO-BRAC; Cowhig, Dan, CIV, WSO-BRAC
Subject: RE: Call from Pete Potachney

I share some of David's skepticism and await his paper.

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

From: Hague, David, CIV, WSO-BRAC
Sent: Thursday, July 21, 2005 12:05 PM
To: Cirillo, Frank, CIV, WSO-BRAC; Battaglia, Charles, CIV, WSO-BRAC; Cook, Robert, CIV, WSO-BRAC; Dinsick, Robert, CIV, WSO-BRAC; Ed Brown (edbrown61@verizon.net); Hanna, James, CIV, WSO-BRAC; Sillin, Nathaniel, CIV, WSO-BRAC; Small, Kenneth, CIV, WSO-BRAC; Van Saun, David, CIV, WSO-BRAC
Cc: Hill, Christine, CIV, WSO-BRAC; Cowhig, Dan, CIV, WSO-BRAC
Subject: RE: Call from Pete Potachney

All -- We will develop presently a talking paper on these issues and more fully develop them from both policy and legal perspectives. While I don't yet agree 100% with what's below, there is no doubt we all have to be smart on the subject. Paper to follow.
Thanks Frank. David

From: Cirillo, Frank, CIV, WSO-BRAC
Sent: Thursday, July 21, 2005 11:56 AM

To: Battaglia, Charles, CIV, WSO-BRAC; Hague, David, CIV, WSO-BRAC; Cirillo, Frank, CIV, WSO-BRAC; Cook, Robert, CIV, WSO-BRAC; Dinsick, Robert, CIV, WSO-BRAC; Ed Brown (edbrown61@verizon.net); Hanna, James, CIV, WSO-BRAC; Sillin, Nathaniel, CIV, WSO-BRAC; Small, Kenneth, CIV, WSO-BRAC; Van Saun, David, CIV, WSO-BRAC
Cc: Hill, Christine, CIV, WSO-BRAC; Cowhig, Dan, CIV, WSO-BRAC
Subject: Call from Pete Potachney

Charlie / David / Team Leads:

Pete called Wednesday with the following considerations.

David - his wishes were that we devise a way to inform Commissioners of the perspective below so at least the Commission is aware of why OSD feels that, where legal, using the BRAC process to the best advantages stated have solid rationale. I tend to agree. I am not sure how best to portray this issue. I did incorporate a very broad question to the Clearinghouse where they might respond in a formal statement - but I think any formal reply from them will necessarily talk around the issue due to McKinney Act and Environmental type considerations?

The Issues:

1) One reason DoD includes below threshold recommendations within BRAC is that by closing a facility under the BRAC legislations, certain accommodations related to providing precedence to local redevelopment control of the real estate greatly offset the impact created by the closure itself. Without this accommodation, a closure would drive the facility transfer to follow otherwise stated transfer and disposal authorities such as the McKinney Homeless Assistance Act. (See CRS related Report # RS22066, dated Feb 23, 2005)

2) DoD is also very concerned that the Commission's comments indicate the Commission might assign units and aircraft without mention of specific location - such as "and transfer all assigned units and aircraft to locations determined as appropriate by the Secretary of ". I can point out numerous instances where we did just that in 1993 and 1995. Due to advantages related to NEPA they much prefer that recommendations at least would say "and transfer all assigned units and aircraft to Ariverderci AFB, NAS Sayonara, and other locations determined as appropriate by the Secretary of ". In that way the Decision piece of NEPA is solved which greatly facilitates the execution of the designated action within the six years.

PS: I agree 100%

Frank

Frank A. Cirillo, Jr., P. E.
Director, Review and Analysis
Base Closure and Realignment Commission
2521 Clark Street, Suite 600, Arlington, VA 22202 voice (703) 699-2903 - cell (703) 501-3357 Frank.Cirillo@wso.whs.mil

Hague, David, CIV, WSO-BRAC

From: Creedon, Madelyn (Armed Services) [Madelyn_Creedon@armed-services.senate.gov]
Sent: Monday, June 20, 2005 9:49 AM
To: Cowhig, Dan, CIV, WSO-BRAC; Stucky, Scott (Armed Services)
Cc: Battaglia, Charles, CIV, WSO-BRAC; Hague, David, CIV, WSO-BRAC; Hill, Christine, CIV, WSO-BRAC
Subject: RE: 11:00 Monday June 20 - Meeting re recusals and voting

I am not going to be able to make an 11:00 on Monday. I will try and catch Scott before he comes over. I will tell you, however, that my view is that a majority of the commissioners eligible to vote should carry the day on any motion other than those actions that require a statutory minimum number of votes to prevail.

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

From: Cowhig, Dan, CIV, WSO-BRAC [mailto:Dan.Cowhig@wso.whs.mil]
Sent: Thursday, June 16, 2005 3:32 PM
To: Creedon, Madelyn (Armed Services); Stucky, Scott (Armed Services)
Cc: Battaglia, Charles, CIV, WSO-BRAC; Hague, David, CIV, WSO-BRAC; Hill, Christine, CIV, WSO-BRAC
Subject: 11:00 Monday June 20 - Meeting re recusals and voting

Gentlepersons -

The meeting regarding recusals and voting procedures that was initially scheduled for 13:15 on Monday June 20 is now scheduled for 11:00 that same day.

V/R

Dan Cowhig
 Deputy General Counsel and Designated Federal Officer
 2005 Defense Base Closure and Realignment Commission
 2521 South Clark Street
 Suite 600 Room 600-20
 Arlington Virginia 22202-3920
 Voice 703 699-2974
 Fax 703 699-2735
 dan.cowhig@wso.whs.mil
www.brac.gov

*Don spoke that
 changed view
 supports us if voting
 component issues
 individually*

Hague, David, CIV, WSO-BRAC

From: Cirillo, Frank, CIV, WSO-BRAC
Sent: Monday, August 08, 2005 4:20 PM
To: Sarkar, Rumu, CIV, WSO-BRAC; Cirillo, Frank, CIV, WSO-BRAC; Cook, Robert, CIV, WSO-BRAC; Dinsick, Robert, CIV, WSO-BRAC; Ed Brown (edbrown61@verizon.net); Hanna, James, CIV, WSO-BRAC; Sillin, Nathaniel, CIV, WSO-BRAC; Small, Kenneth, CIV, WSO-BRAC; Van Saun, David, CIV, WSO-BRAC
Cc: Cook, Robert, CIV, WSO-BRAC; Hague, David, CIV, WSO-BRAC; Napoli, Andrew, CIV, WSO-BRAC
Subject: RE: A Question and a Request

Follow Up Flag: Follow up
Due By: Friday, August 12, 2005 3:00 PM
Flag Status: Flagged

Team Leads: Please see Rumu's request and my note to her. I need your consolidated input to be submitted through Nat to indicate those items that you as team leads in concert with your analysts anticipate or foresee as having a potential of requiring special language to be drafted by GC. Some examples I have heard discussed which I need you to include and expand upon or add to if at all possible - If I am correct, so include; if not, so state; if not all inclusive, so develop:

- JCSG - General Newton stated that he wants the eventual ANG recommendation language to be crafted such that even if "tail number" moves are not specified that the language allows the understanding of reduction and or addition of specific aircraft from and to specified locations - thus facilitating programmatic moves by USAF. - Please elaborate
- DoN - General Hill requested that we develop contingency language as related to the NSANO - Federal Activity. - Please elaborate
- JCSG (and I believe A, others?) - are working with potential issues of Privatization-in-place which must be explicitly stated in the language in order to be possible - please assure all such items are identified and detailed.
- Issues - any contingent language expected related to environmental or economic impact issues - please list and elaborate
- I am sure there are others - think out of the box and list before it is too late.

Team Leads Only Please - Respond directly to Nat for consolidation with info directly to Rumu and myself NLT August 12th

Rumu:

As to the first part; I indeed owe Andy what we can resurrect about that date as part of an annex I need to provide by the middle of the month. As I mentioned to him - it is not a single date but a compilation of many - my words to Andy at the time:

"We received Volume I, Parts 1 and 2 on May 13th, three days earlier than legislatively required. Over the next week OSD delivered the three specific Service and five of the six JCSG specific Analysis and Recommendation Volumes (V- XII) and the Classified Volume II (Force Structure Plan) by May 19th. Between May 18th and May 28th we received the corresponding "Supplemental Information" CDs for Volumes III - XII.

A large part of the information was not fully declassified for some time but a "Reading Room" was set up for Commission use on ??? The long pole in the tent was the remaining data base, questionnaire, Service Executive Groups and COBRA info which was declassified over the next three weeks.

More to come."

As to the second part; Good point - see above.

From: Sarkar, Rumu, CIV, WSO-BRAC
Sent: Monday, August 08, 2005 1:48 PM
To: Cirillo, Frank, CIV, WSO-BRAC
Cc: Cook, Robert, CIV, WSO-BRAC; Hague, David, CIV, WSO-BRAC
Subject: A Question and a Request

Hague, David, CIV, WSO-BRAC

From: Hague, David, CIV, WSO-BRAC
Sent: Tuesday, June 21, 2005 2:15 PM
To: Cirillo, Frank, CIV, WSO-BRAC
Cc: Cowhig, Dan, CIV, WSO-BRAC; Sarkar, Rumu, CIV, WSO-BRAC
Subject: TALKING PTS FOR FRIDAY

Frank,

RE Chairs meeting Fri w/SEC England. Bob and I talked last week about possible topics. He was working on it. Bob was also working on the R&A input to the QFRs for the Chair. Rumu is processing from the GC side.

1. Charlie advises that the Chair wants to make the ANG issue priority #1. Angst and potential legal issues abound. DoDIG has not been forthcoming with DoD's legal position on the issue of ability of DoD to effect changes to ANG bases without consultation and consent of the cognizant governors. We expect an opinion from DOJ in mid-July in response to our request. We have submitted a series of questions to the clearinghouse inquiring into procedures ICW the ANG moves, legal basis for the actions, and related matters. We can provide the Chair with the questions we sent to the clearinghouse.
2. Chair will want to ask the Secretary to encourage speed at the Clearinghouse. Note that it is a good system and is working well.
3. Can mention our schedule: 1 July GAO report due and our adds list will be sent to SecDef. We consider the list to be a working document provided to DoD to facilitate preparation of their response on July 18, after the 15 day waiting period required by statute.
4. Mil air support has been good.
5. Need for expedited COBRA runs on the adds to allow us to make informed decisions.
6. Mention the very public nature of BRAC activities and correspondence -- everything on the BRAC website as fast as we can get it uploaded.

David

August 17, 2005

*Don -
look over
comment
pls. JD.*

MEMORANDUM

TO: Executive Director

SUBJECT: Proposed Changes to the Procedural Rules of the 2005 Defense Base Closure and Realignment Commission

FROM: Office of the General Counsel

ISSUE: In light of the upcoming final deliberations of the 2005 Defense Base Closure and Realignment (BRAC) Commission, it is clear that certain procedural changes may need to be made in order to facilitate a smooth and efficient decision-making process and the actual voting done by Commissioners. These deliberations (and the subsequent voting) are critical to the BRAC Commission making its recommendations to the President, thereby enabling it to meet its statutory obligations. This memorandum proposes new procedural rules to augment the existing rules for the reasons discussed below. Current Commission procedural rules are attached. The rules are presented in bullet format for ease of understanding.

PROPOSED RULE 11.

- When the Commission meets to deliberate and vote on the recommendations to close or realign installations added for consideration (adds) to the Secretary of Defense's list of installations recommended for closure or realignment, a motion (duly seconded) shall be made by a member qualified to make such a motion.
- If the motion to accept the adds recommendation is adopted by a duly constituted quorum of not less than seven members then serving, the recommendation shall constitute the recommendation of the Commission, except as may be further amended or rescinded in accordance with Rule 12 by not less than five members then serving.
- If the motion is rejected, then a duly qualified member may move to amend the original adds recommendation by inserting, striking or substituting language, or by a combination thereof.
- If the motion (duly seconded) fails to be adopted by not less than seven members then serving, the adds recommendation shall fail.
- Whereupon, a motion may be brought by a duly qualified member to consider the original recommendation pertinent to the military installation in question, if any, as submitted to the Commission by the Secretary of Defense (the "Secretary").

DISCUSSION: Proposed rule 11 lays out a step-by-step consideration of the adds. The term "duly qualified member" has been inserted to indicate that recused or otherwise disqualified Commissioners shall not be eligible to make these motions.

If the "adds" recommendation advanced by the Chairman is not adopted in its original or amended form by seven or more Commissioners, then the motion fails. If there is a recommendation pertinent to the installation in question on the Secretary's list, it will be immediately considered.

For example, if the motion (as may be amended) to adopt the add to close NAS Brunswick fails, then the Secretary's original proposal of realigning NAS Brunswick should be considered. However, the Secretary's recommendation is not an add and therefore, will not require a supermajority vote in order to be sustained. If rejected, then both the add and the Secretary's recommendation will fail.

PROPOSED RULE 12:

All recommendations, amendments are subject to further amendments and

- If the Chairman determines that a pending motion (~~duly seconded~~) conflicts with a prior adopted motion, he may request that the pending motion be withdrawn or be resubmitted ~~as motion to amend the prior adopted motion.~~ *as motion to amend*
- If the subject of the prior adopted motion relates to an add, then the proposed amendment thereto must be adopted by not less than seven members then serving, but if not, then the amendment may be adopted by not less than five members then serving.
- If, ~~on the other hand,~~ *if a Commissioner* the Chairman determines that a motion has been duly adopted that conflicts with the terms of a prior adopted motion, then he may request that a motion to amend and reconcile both motions be offered by a duly qualified member. *that*

Full Record

DISCUSSION: This rule anticipates that there may be some conflict or inconsistency between two motions. For example, a joint cross-service proposed recommendation may be inconsistent with a prior adopted motion offered by the Army team. To eliminate this potential confusion, a pending motion may be withdrawn or recast as an amendment to the original Army recommendation, as passed by the Commission. If, on the other hand, two inconsistent motions have already been passed, then a motion to amend and reconcile both motions should be offered by a duly qualified member. No provision has been made in this rule for an amendment that fails leaving both underlying (and conflicting) motions on the record. The assumption is that this rule need not be invoked since the drafting of the motions will be mutually consistent rather than inconsistent with each other, and further, that amendments, if needed, will be made until a final reconciliation of two conflicting motions is made.

Such an amendment shall only require five votes to be adopted. However, if the motion to reconcile both conflicting or inconsistent motions relates to an add installation, then the rule provided for a supermajority vote since the Commission is still voting on enlarging the scope of the Secretary's original recommendation. In the case where the amendment actually reduces the scope of the Secretary's recommendation, only five votes will be required. Hopefully, this will not be a distinction that the Commission will be forced to make.

PROPOSED RULE 13:

- In preparation for the Commission's final deliberations commencing on August 24, 2005, ~~the Chairman and~~ each Commissioner shall submit ~~individual~~ written motions no later than 5:00 p.m. on August 22, 2005, ~~that~~ propose amendments to the ~~Secretary's final~~ recommendations as submitted to the Commission on May 13, 2005.
- Notwithstanding this rule, the ~~Chairman and the~~ Commissioners shall not be barred or prejudiced from offering motions during the course of final deliberations commencing on August 24, 2005, ~~as long as consideration for such a motion is seconded.~~

Base Closure and Re-entry

of the Secretary of Defense

now

DISCUSSION: This proposed procedural rule change requests all Commissioners (including the Chairman) to make their proposed motions in a timely manner thus enabling BRAC staff members to incorporate the amendments into the binder of motions for the final deliberations. The motions are designed to meet statutory criteria, including the requirement that the Commission find substantial deviation from the selection criteria as set for the in the Base Closure Act.

The last bullet permits motions to amend to be made during the course of deliberations. Requiring unanimous consent of the Commissioners for such motions was considered but rejected as being too restrictive and a potentially serious impediment to the process. Majority vote on the motions gives an added measure of flexibility. The requirement for a second will limit such motions to those that truly deserve consideration. This may also facilitate making technical amendments for purposes of ensuring clarity and consistency in the record.

RECOMMENDATION: That Rules 11, 12 and 13, above, be adopted by the Commission at a meeting where a quorum is present.

Attachment: a/s

August 16, 2005

MEMORANDUM

TO: Executive Director

SUBJECT: Proposed Changes to the Procedural Rules of the 2005 Defense Base Closure and Realignment Commission

FROM: Office of the General Counsel

ISSUE: In light of the upcoming final deliberations of the 2005 Defense Base Closure and Realignment (BRAC) Commission, it is clear that certain procedural changes may need to be made in order to facilitate a smooth and efficient decision-making process and the actual voting done by Commissioners. These deliberations (and the subsequent voting) are critical to the BRAC Commission making its final recommendations to the President, thereby enabling it to meet its statutory obligations. This memorandum proposes new procedural rules to augment the existing rules, attached, as adopted by the BRAC Commission, for the reasons discussed below. The rules are presented in bullet format for ease of understanding.

PROPOSED RULE 11

added for consideration to the Secretary of Defense's list of installations recommended for closure (adds)

deliberate and vote on the closure or realignment recommendation to

- When the Commission meets to consider the recommendations to add military installations as adopted at the July 19, 2005 public hearing of the Commission (adds), a motion (duly seconded) shall be made by a member qualified to make such a motion.
- If the motion to ~~accept~~ *close or realign* the adds recommendation is adopted by a duly constituted quorum of not less than seven members then serving, the recommendation shall constitute the ~~final~~ recommendation of the Commission, except as may be further amended or rescinded in accordance with Rule 12 by not less than seven members then serving. *5?*
- If the motion is rejected, then a duly qualified member may move to amend the original adds recommendation by inserting, striking or substituting language, or by a combination thereof.
- If the motion (duly seconded) fails to be adopted by not less than seven members then serving, the adds recommendation shall fail.
- Whereupon, a motion may be brought by a duly qualified member to consider the original recommendation pertinent to the military installation in question, if any, as submitted to the Commission by the Secretary of Defense (the "Secretary").

DISCUSSION: Although the language may be a little difficult to follow, it actually lays out a step-by-step consideration of the "adds" recommendations. As a preliminary matter, please note that the term "duly qualified member" has been inserted to indicate that recused or otherwise disqualified Commissioners shall not be eligible to make these motions. (The expectation is that

Commissioners who have recused themselves from certain matters also will not vote on those matters.)

If the "adds" recommendation advanced by the Chairman ^{is} not adopted in its original or amended form by seven or more Commissioners, then the motion fails. At that point, the Commissioners are advised to revert to the original recommendation made by the Secretary as pertinent to the military installation in question. Further amendments may be offered by duly qualified members at this point. Additionally, at this point, the Commissioners are no longer considering an "adds," but the original recommendation of the Secretary. Therefore, a supermajority of seven Commissioners is not required; a quorum of five members will suffice.

For example, if the motion (as may be amended) to adopt the "adds" recommendation to close NAS New Brunswick fails, then the Secretary's original proposal of realigning New Brunswick should be considered. However, the Secretary's recommendation is not an "adds" and therefore, will not require a supermajority vote in order to be sustained. If rejected, then both the "adds" recommendation and the Secretary's recommendation will fail.

PROPOSED RULE 12:

- If the Chairman determines that a pending motion (duly seconded) conflicts with a prior adopted motion, he may request that the pending motion be withdrawn or be resubmitted as motion to amend the prior adopted motion.
- If the subject of the prior adopted motion relates to an adds recommendation, then the proposed amendment thereto must be adopted by not less than seven members then serving, but if not, then the amendment may be adopted by not less than five members then serving.
- If, on the other hand, the Chairman determines that a motion has been duly adopted that conflicts with the terms of a prior adopted motion, then he may request that a motion to amend and reconcile both motions be offered by a duly qualified member.

DISCUSSION: This rule anticipates that there may be some conflict or inconsistency between two motions. For example, a joint cross-service proposed recommendation may be inconsistent with a prior adopted motion offered by the Army team. To eliminate this potential confusion, a pending motion may be withdrawn or recast as an amendment to the original Army recommendation, as passed by the Commission. If, on the other hand, two inconsistent motions have already been passed, then a motion to amend and reconcile both motions should be offered by a duly qualified member. No provision has been made in this rule for an amendment that fails leaving both underlying (and conflicting) motions on the record. The assumption is that this rule need not be invoked since the drafting of the motions will be mutually consistent rather than inconsistent with each other, and further, that amendments, if needed, will be made until a final reconciliation of two conflicting motions is made.

Such an amendment shall only require five votes to be adopted. However, if the motion to reconcile both conflicting or inconsistent motions relates to an "adds" installation, then the rule

provided for a supermajority vote since the Commission is still voting on enlarging the scope of the Secretary's original recommendation. In the case where the amendment actually reduces the scope of the Secretary's recommendation, only five votes will be required. Hopefully, this will not be a distinction that the Commission will be forced to make.

PROPOSED RULE 13:

- In preparation for the Commission's final deliberations commencing on August 24, 2005, the Chairman and each Commissioner shall submit individual written motions no later than 5:00 p.m. on August 22, 2005, that propose amendments to the Secretary's final recommendations as submitted to the Commission on May 13, 2005.
- Notwithstanding this rule, the Chairman and the Commissioners shall not be barred or prejudiced from offering motions during the course of final deliberations commencing on August 24, 2005, as long as consideration for such a motion is seconded ~~and passed by unanimous consent of the Commission. If unanimously consented to, the motion may then be deliberated upon and voted on.~~

DISCUSSION: This proposed procedural rule change simply requests all Commissioners (including the Chairman) to make their proposed motions in a timely manner thus enabling BRAC staff members to incorporate the amendments into the binder of motions for the final deliberations. The motions are designed to meet statutory criteria requiring the Commission to make a finding of a substantial deviation from the selection criteria as set for the in the BRAC statute, and specify the specific criterion, and therefore, to propose amendments to the Secretary's final recommendation. This will keep the process honest so that the statutory criteria are fully met, and will also permit amendments to the "adds" recommendations using the supermajority requirement. The last bullet permits motions to amend to be made during the course of deliberations, ~~but only upon the unanimous consent of the Commissioners. This tracks with a rule of the House of Representatives allowing amendments to be made on the floor based on the unanimous consent of the Chamber or Committee.~~ This gives an added measure of flexibility allowing Commissioners to make motions while in final deliberations. This may also facilitate making technical amendments for purposes of ensuring clarity and consistency in the record.

RECOMMENDATION: That Rules 11, 12 and 13, above, be adopted by the Commission at a meeting where a quorum is present.

Attachment: a/s

of the Commission for such motions
Requiring unanimous
consent was considered but is not
rejected as too restrictive and a
potentially serious impediment
possible hindrance to the process.
One Commissioner would

Hague, David, CIV, WSO-BRAC

From: Hague, David, CIV, WSO-BRAC
Sent: Tuesday, June 21, 2005 3:02 PM
To: 'Turner, Gordon'
Subject: RE: BRAC Voting Follow-up

Gordon,

The discussion below should answer your questions as well as any other permutations with which the Commission may have to deal. As to your last question, we look to the BRAC statute for direction on responding to SecDef's recommendations. I have no follow-up on the issue.

If there is not a vote of five commissioners to approve a Secretary or Commission recommendation, the recommendation does not go forward to the President.

The seven-of-nine vote requirement only applies to "adds." "Adds" are additions to the Secretary's list of recommendations for closure or realignment, not changes to the recommendations that result in additions to the manpower, materiel or missions of an installation.

The seven-of-nine vote requirement comes into play only when the Commission recommends a greater loss (including closure) to a given installation than the Secretary recommended. (Those are "adds" in the statutory parlance.) That is, seven of nine votes are required when:

- * closing an installation not recommended for closure by the Secretary,
- * reducing the operations on a given base to a greater extent than was recommended by the Secretary, or
- * reducing operations at a given base that was not recommended for reduction by the Secretary.

An installation involved in the "adds" process that is not recommended for either closure or realignment - but is in fact a "gainer," requires only five, not seven of nine votes.

Good to meet you.

David Hague

From: Turner, Gordon [mailto:gordon.turner@mail.house.gov]
Sent: Tuesday, June 21, 2005 9:32 AM

To: 'david.hague@wso.whs.mil'
Cc: King, Mac
Subject: BRAC Voting Follow-up

Mr. Hague,

Thanks for taking the time to discuss the Commission voting procedures with Congressman Ortiz the other day.

After processing the info provided, we have a few of follow-up questions regarding alterations to proposed realignment scenarios.

* How would the voting be conducted for "modifications" to recommended realignments? Example: If a DoD recommendation proposed realigning "Unit A" from "Fort Big" to "Fort Bigger", but the Commission determined it should be moved from "Fort Big" to "Fort Smaller". Would the Commission vote to reject the proposed recommendation (less than 5 votes to confirm) and then vote for a new realignment (7 votes) or would the modification to the recommendation be made and voted on once needing on the 5 votes to confirm?

* If a base was recommended for realignment to lose or gain "Function A" and the Commission determined that it should additionally lose or gain "Function B", how would this be voted on?

* Similar to above. If a base was recommended for realignment to lose or gain "Function A" and the Commission determined that it should lose or gain "Function B" instead of "Function A", how would this be voted on?

* Any follow-up on our discussion regarding scope of appropriate changes under BRAC law? Again, the issue was proposed movement of Flag billets / minor organizational changes that were attempted outside of BRAC and denied by Congress.

Please give me a call if you have any questions.

Vr,
Gordon

Gordon Turner
Congressional Fellow
Office of Congressman Solomon Ortiz (TX-27)
(202) 225-7742

Hague, David, CIV, WSO-BRAC

From: Sarkar, Rumu, CIV, WSO-BRAC
Sent: Monday, September 12, 2005 1:53 PM
To: Hague, David, CIV, WSO-BRAC
Subject: FW: Draft Language for inclusion in Chairman's Testimony of Record before the SASC

FYI, Rumu

Rumu Sarkar
Associate General Counsel
2005 Defense Base Closure and Realignment Commission
2521 South Clark Street, Suite 600, Room 600-18
Arlington, VA 22202-3920
Tel: (703) 699-2973
Cell: (703) 901-7843
Fax: (703) 699-2735

From: Sarkar, Rumu, CIV, WSO-BRAC
Sent: Friday, September 09, 2005 2:24 PM
To: Cowhig, Dan, CIV, WSO-BRAC; Cirillo, Frank, CIV, WSO-BRAC
Subject: Draft Language for inclusion in Chairman's Testimony of Record before the SASC

Dan: I discussed this issue with Frank and suggest the following language be inserted in the report (although I am not sure why this stray question is showing up now). In any case, I appreciate your coordination in this matter.

"If I am confirmed, in my capacity as Chairman I plan to have the BRAC Commission schedule base visits as quickly as practicable once the Secretary of Defense issues his list of proposed closures and realignments. As a rule, I plan on having the Commission schedule visits with at least one Commissioner for all military installations where 300 or more net civilian job losses would result from the proposed recommendations from the Secretary, generally following the threshold requirements set forth in 10 U.S.C. Section 2687. For installations with lesser expected impacts, BRAC staff members will be scheduled to visit. Where feasible, Commissioners will be asked to visit other installations as well depending on their individual availability, and in light of the nature and complexity of the recommendations to be made by the Secretary of Defense. Further, I am aware that Section 2914(d)(5)(A) of the BRAC statute, 10 U.S.C. Section 2687 note, requires that at least two Commissioners visit any base that the Commission wishes to add to the Secretary's list before the Commission's final report is issued to the President."

Hope this does the trick. Thanks, Rumu

Rumu Sarkar
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Arlington, VA 22202-3920
Tel: (703) 699-2973
Cell: (703) 901-7843
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Hague, David, CIV, WSO-BRAC

From: Cowhig, Dan, CIV, WSO-BRAC
Sent: Tuesday, June 21, 2005 2:33 PM
To: Hague, David, CIV, WSO-BRAC
Subject: Fw: BRAC Voting Follow-up

Sir -

Change 1 to 2: 7 of 9.

V/R

Dan

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

From: Cowhig, Dan, CIV, WSO-BRAC <Dan.Cowhig@wso.whs.mil>
To: Hague, David, CIV, WSO-BRAC <David.Hague@wso.whs.mil>
Sent: Tue Jun 21 14:21:08 2005
Subject: Re: BRAC Voting Follow-up

Sir -

My first thought is that it is an internal matter for the Commission, not something we should debate with congressional staff.

My second thought is that all questions except the last can be answered by reading the statute and the rules.

The last is a minefield we don't need to enter (yet).

That typed:

1. 7 of 9 DNA
2. Simple majority
3. 7 of 9
4. No

V/R

Dan

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

From: Hague, David, CIV, WSO-BRAC <David.Hague@wso.whs.mil>
To: Cowhig, Dan, CIV, WSO-BRAC <Dan.Cowhig@wso.whs.mil>
Sent: Tue Jun 21 09:33:58 2005
Subject: FW: BRAC Voting Follow-up

Like already noted Dan. You cannot escape. Your thought? DH

From: Turner, Gordon [mailto:gordon.turner@mail.house.gov]
Sent: Tuesday, June 21, 2005 9:32 AM
To: 'david.hague@wso.whs.mil'
Cc: King, Mac
Subject: BRAC Voting Follow-up

SEC. 2910. DEFINITIONS

As used in this part:

(1) The term "Account" means the Department of Defense Base Closure Account 1990 established by section 2906(a)(1).

(2) The term "congressional defense committees" means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(3) The term "Commission" means the Commission established by section 2902.

(4) The term "military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense. *[The preceding sentence shall take effect as of November 5, 1990, and shall apply as if it had been included in section 2910(4) of the Defense Base Closure and Realignment Act of 1990 on that date.]*

(5) The term "realignment" includes any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

(6) The term "Secretary" means the Secretary of Defense.

(7) The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

(8) The term "date of approval", with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under this part expires. *[The date of approval of closure of any installation approved for closure before November 30, 1993 shall be deemed to be November 30, 1993.]*

(9) The term "redevelopment authority", in the case of an installation to be closed or realigned under this part, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan. *[The above revision shall take effect as if included in the amendments made by section 2918 of Pub. L. 103-160.]*

(10) The term "redevelopment plan" in the case of an installation to be closed or realigned under this part, means a plan that--

(A) is agreed to by the local redevelopment authority with respect to the installation; and

(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure or realignment of the installation.

(11) The term "representative of the homeless" has the meaning given such term in section 501(i)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411(i)(4)).

*Reduction and
Relocation
result however
is an increase
elsewhere*

Bases and Closures in the Simplest Terms

1. The military has a specific need and opens a base to address it.
2. When that need no longer exists the military attempts to close the base so the money can go where it's needed.
3. The community that has grown around the base is understandably not happy about losing a major part of their economy.
4. Political leaders representing the community fight the military fiercely in an effort to keep the unneeded base open.
5. Almost without fail, communities represented by powerful congressional leaders will keep the unneeded bases open, despite the wishes of the military and at a cost of millions of dollars to taxpayers.

Hague, David, CIV, WSO-BRAC

From: Cowhig, Dan, CIV, WSO-BRAC
Sent: Monday, August 08, 2005 11:16 AM
To: Hague, David, CIV, WSO-BRAC; Sarkar, Rumu, CIV, WSO-BRAC
Subject: Re: UPDATE

Sir -

Good news re Senator Ensign. That was going to be a bit too much. We still need to ride RA about getting the MFRs done, though.

For ANG questions, I would just prep the more aggressive commissioners to grill the witnesses. I still like not allowing them to make statements - they're not going to say anything they haven't said before - but instead taking their written statements for the record and getting straight to the questions. Brad and Dave have worked up some questions about the proposal Brad worked up. We could prep commissioners to nail down DoD on the legality of the ANG recommendations. They owe Commissioner Coyle his legal opinion from the last hearing. It'd be good to bring that lack of cooperation up. It also might help for commissioners who believe that the ANG recommendations violate the law to say so to the witnesses.

Did your email yesterday indicate the Chairman has given the nod to my analysis of the WRF piece? Has our analysis gone to OLC?

It's a bad idea, by the way, to send Brad's proposed solution to DoD for comment. First, it'll look like a pre-made decision, either a product of RA the commissioners might or might not adopt, or worse a back-room commissioner product.

Voting order sounds good. Recusals, I'd stick with the bright-line if it's in the text of the recommendation it's substantial. I would get rid of the planes, though, since moving planes isn't our business. That'd eliminate many recusals. A single motion that goes through and cuts all those links, turning them into footprints instead, should be close to the top of the agenda.

My thumbs are falling off.

V/R

Dan

Woot.com

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

From: Hague, David, CIV, WSO-BRAC <David.Hague@wso.whs.mil>
To: Cowhig, Dan, CIV, WSO-BRAC <Dan.Cowhig@wso.whs.mil>; Sarkar, Rumu, CIV, WSO-BRAC <rumu.sarkar@wso.whs.mil>
Sent: Mon Aug 08 10:21:03 2005
Subject: UPDATE

Today's staff meeting

Chairman spoke with Sen Ensign, who is agreeable to receiving requested BRAC input sometime after 8 Sep. We will update as much of the requested contact information as reasonably possible between now and 8 Sep, but priority is getting ready for the hearings and completing the report. The update information developed between now and 8 Sep will be routed through us to Charlie before posting on the Web.

Check out the front page article on today's Wash Post about role of the military in homeland defense. Let me know of any Art 10/32 questions that you think should be asked at the hearings this week.

Only firm decision on hearings thus far is that adds will go first and follow-on actions regarding the adds (if any) will be taken care of at that time. ANG recommendations may

follow, and then Army, Navy, AF (all but a handful of AF recommendations are ANG related), and JS.

Bill, rules, and recusals are current topics for us. What is your reaction to setting a dimimus level for recusal? We could use the threshold amounts on civilian personnel and not consider equipment or military personnel. That level is pretty high. However, in their recusals, the commissioners said "I recuse myself from any substantial participation in any decisions involving VA/CA/UT/NV military facilities and from any substantial participation in any decisions involving any facilities which are proposed to be realigned in favor of VA/CA/UT/NV." They did not say "substantially involving." They said "substantial participation." So?

David

Hague, David, CIV, WSO-BRAC

From: Douglas.Letter@usdoj.gov
Sent: Wednesday, September 07, 2005 2:31 PM
To: H.Thomas.Byron@usdoj.gov; David.Hague@wso.whs.mil; Dan.Cowhig@wso.whs.mil;
rumu.sarkar@wso.whs.mil
Cc: Scott.McIntosh@usdoj.gov
Subject: RE: Base Closing cases -- URGENT

David/Dan: *senior DOJ attorney for our cases.*

Peter Keisler asked me to get in touch with you immediately because the 3d Circuit has ~~asked us~~ when the Comm will issue its report to the President tomorrow (likely, other Circuits will ask the same question).

I think we had discussed that the Comm should issue its report as early as possible on 9/8. However, given that some of the states are seeking emergency relief, we do not believe it would be appropriate to issue the report first thing in the morning -- if we tell the courts this is what the Comm is going to do, that might cause the courts to issue emergency relief to give themselves time to consider the issues. In addition, it would likely harm our relations with the courts of appeals. Therefore, we strongly urge that you authorize us to tell the courts that the report will be issued no earlier than 1 pm tomorrow. If we have no injunctions by that time (and the Connecticut TRO has been lifted) the Comm would be free to issue its report at once.

Please let us know as quickly as possible if we can go ahead and tell the court of appeals clerks' offices that the report will not issue before 1 pm tomorrow, but will issue shortly thereafter in the absence of injunctions. Please give Peter or me (202 514 3602) a call if you want to discuss. Thank you!

Edith A. Clark

Hague, David, CIV, WSO-BRAC

From: Hague, David, CIV, WSO-BRAC
Sent: Saturday, May 21, 2005 3:38 PM
To: 'jbilbray@kkbr.com'; 'Martha.krebs@att.net'; 'jangehman@aol.com'; 'jvh@jimhansenassociates.com'; 'Hilltmg1@aol.com'; 'lloyd.newton@pw.utc.com'; Principi, Anthony, CIV, WSO-BRAC; 'skinnners@gtlaw.com'; 'bgtutner@satx.rr.com'
Cc: Battaglia, Charles, CIV, WSO-BRAC; Cowhig, Dan, CIV, WSO-BRAC; Sarkar, Rumu, CIV, WSO-BRAC
Subject: NG and ANG installations; legal issues

Commissioners --

A discussion follows of the current state of play in connection with the statutory authority of DoD to close a NG/ANG facility without the consent of the governor of the state in which the facility is located.

The Illinois Attorney General has been especially vocal in asserting that her governor's consent is required before any NG/ANG facilities are closed in Illinois. She has said that she will seek relief in Federal court if any Illinois NG/ANG units are on the DoD list of installations recommended for closure or realignment. The ANG units at the Springfield Airport have been recommended for realignment with a job loss of 268 out of 1139, but no Illinois NG/ANG units are listed for closure. I am unaware of any suit having been filed in Federal court by the Illinois Attorney General or anyone else. As discussed below, it would seem to be premature to file such a suit.

If all of the DoD recommendations are approved by the BRAC Commission, more than 20 ANG units will become "enclaves," that is a unit that has no aircraft, but retains a certain amount of support structure. The size of the remaining force structure varies unit by unit. Additionally, the DoD recommendations leave several states with no ANG flying mission at all.

Past BRACs have closed Guard facilities but the units at those facilities were moved to other locations in the same state. The actions, which were taken in consultation with the effected state adjutant general (the governor's representative), were largely uncontroversial.

Those who claim consent of state governors is required before NG/ANG units in their states are closed or realigned cite two provision of the United States Code:

Title 32, Chapter 1, Section 104(c).

Section 104 (c) is most often referenced alone, but it is best understand as part of the entire section, set forth below:

Sec. 104. - Units: location; organization; command

- (a) Each State or Territory and Puerto Rico may fix the location of the units and headquarters of its National Guard.
- (b) Except as otherwise specifically provided in this title, the organization of the Army National Guard and the composition of its units shall be the same as those prescribed for the Army, subject, in time of peace, to such general exceptions as the Secretary of the Army may authorize; and the organization of the Air National Guard and the composition of its units shall be the same as those prescribed for the Air Force, subject, in time of peace, to such general exceptions as the Secretary of the Air Force may authorize.
- (c) To secure a force the units of which when combined will form complete higher tactical units, the President may designate the units of the National Guard, by branch of the Army or organization of the Air Force, to be maintained in each State and Territory, Puerto Rico, and the District of Columbia. **However, no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the**

approval of its governor (emphasis added).

(d) To maintain appropriate organization and to assist in training and instruction, the President may assign the National Guard to divisions, wings, and other tactical units, and may detail commissioned officers of the National Guard or of the Regular Army or the Regular Air Force, as the case may be, to command those units. However, the commanding officer of a unit organized wholly within a State or Territory, Puerto Rico, or the District of Columbia may not be displaced under this subsection.

(e) To insure prompt mobilization of the National Guard in time of war or other emergency, the President may, in time of peace, detail a commissioned officer of the Regular Army to perform the duties of chief of staff for each fully organized division of the Army National Guard, and a commissioned officer of the Regular Air Force to perform the duties of the corresponding position for each fully organized wing of the Air National Guard.

(f) Unless the President consents -

(1) an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded; and

(2) the actual strength of such an organization in commissioned officers or enlisted members may not be reduced below the minimum strength prescribed by the President

The other relevant statute is contained in Title 10 Section 18238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units

A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State or, in the case of the District of Columbia, the commanding general of the National Guard of the District of Columbia (emphasis added).

The reported DoD position is that the NG/ANG facilities that SECDEF has included on his list can be closed or realigned without anyone's consent (other than the consent of the BRAC Commission, and approval of the President). The DoD position appears to be based in part on the belief that the BRAC statute gives authority for such closings and realignments notwithstanding other, possibly conflicting statutes. Furthermore, from what has been reported and I have been told informally, DoD does not interpret the two statutes above as precluding SECDEF from taking independent action in connection with NG/ANG installations. Ownership of the land on which the installations are located is also a factor (of yet undetermined significance) in determining who has authority to close or realign installations. Some of the NG/ANG installations are on federally owned land; others are on state-owned land. The new recommended joint reserve and guard facilities will all be built on land owned by the US Government.

DoD General Counsel is disinclined to share the advice (formal or informal) that he provided SECDEF on this issue. Also, I have received no indication that SECDEF or DOJ will voice an advance opinion on the issue. Such reticence is usual when an issue like this is being "litigated" in the press and may likely never become a case in controversy.

I will keep you informed of developments.

David Hague, General Counsel

Hi Frank: I have a question for you, namely, when did the Commission decide that it had 100% (or acceptable lesser percentage) of the certified data provided by DoD? I know that we went through several weeks of back and forth of declassification , etc. from the May 13 submission date. The exact date is being entered into the report, so an accurate statement is important.

Secondly, I am working on the request for legal opinion submitted to OGC by George and Liz that takes into account a number of community and Congressional requests to amend or otherwise change DoD proposed recommendations. I want to ensure that OGC is looking at all such proposals that may have legal implications before the recommendations are drafted in final. Gen. Hague suggested that I attend one of R&A's staff meetings to raise this issue with your staff. While I am happy to do so, I will rely on your best judgment re: sourcing all proposed BRAC recommendations that may have legal implications so that we do not take a piecemeal approach, but a consolidated one.

Many thanks, Rumu

Rumu Sarkar
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Hague, David, CIV, WSO-BRAC

To: Cowhig, Dan, CIV, WSO-BRAC
Subject: FW: contingency planning (suggested language)

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

From: H.Thomas.Byron@usdoj.gov [mailto:H.Thomas.Byron@usdoj.gov]
Sent: Tuesday, September 06, 2005 12:00 PM
To: Peter.D.Keisler@usdoj.gov; Neil.Gorsuch@usdoj.gov; David.Hague@wso.whs.mil;
Dan.Cowhig@wso.whs.mil; rumu.sarkar@wso.whs.mil
Cc: Douglas.Letter@usdoj.gov; Andrew.Tannenbaum@usdoj.gov; Carl.Nichols@usdoj.gov;
Gregory.Katsas@usdoj.gov; Robert.Kopp@usdoj.gov; Jody.Hunt@usdoj.gov;
Vincent.Garvey@usdoj.gov; Matthew.Lepore@usdoj.gov; Dan.Meron@usdoj.gov;
Scott.McIntosh@usdoj.gov; Malcolm.L.Stewart@usdoj.gov; Thomas.G.Hungar@usdoj.gov;
Alexander.Haas@usdoj.gov; Jeffrey.Smith5@usdoj.gov; Douglas.Hallward-Driemeier@usdoj.gov
Subject: contingency planning (suggested language)

At Peter Keisler's request, I am forwarding suggested language for a letter that could be sent to the President on September 8, along with the Commission's report in its original form (including all recommendations as approved by Commission vote). This letter would only be necessary if there is, at the time the report is ready to be transmitted, any outstanding injunction against the Commission or its members that prohibits the transmission of a report including a particular recommendation. As Peter mentioned, we strongly recommend that any such letter either (1) be signed by all (or a majority) of the Commission, or (2) be signed by the Chairman and specifically recite that the Chairman has consulted with the members of the Commission, and has been authorized to state that all (or a majority) members agree to the steps set forth in the letter. Here are some possible ways of introducing such a letter:

"By this letter, the undersigned Commissioners, in their official capacities, hereby amend the Commission's report to the President pursuant to Section 2914(d) of the [BRAC Act, with appropriate citation], in compliance with pending judicial orders. This letter is, and should be considered, an integral part of the report transmitted to the President this day."

OR:

"I [Chairman Principe] have consulted with the members of the Commission and have been authorized by them to indicate that [all or a majority] concur with the following official action of the Commission. This letter hereby amends the Commission's report to the President pursuant to Section 2914(d) of the [BRAC Act, with appropriate citation], in compliance with pending judicial orders. This letter is, and should be considered, an integral part of the report transmitted to the President this day."

Here is language that we have discussed, which we believe would suffice to ensure compliance with the type of injunction that plaintiffs have requested in pending litigation, and that would also preserve the Commission's original recommendations once the injunction is vacated or otherwise resolved:

"An injunction has been issued against the BRAC Commission [or commissioners in their official capacities] in the matter, [specify caption and court], enjoining the Commission [or commissioners] from transmitting a report to the President that includes a recommendation concerning [add base/unit information & conform to injunction]. Accordingly, and subject to further review by an appropriate court, the Commission hereby conditionally withdraws the following language from this report: [add quoted language deemed subject to injunction]. If the injunction is vacated, reversed or otherwise withdrawn, the Commission intends the quoted language to be a part of the Commission's report to the President."

The quoted language would be as narrow as possible to comply with the court's injunction without affecting more of the report than is necessary. The goal here would be to give an appellate court (including, if necessary, the Supreme Court) an opportunity to reverse and

vacate any improper injunction before the President must issue his report on September 23. If the courts eliminate any pending injunction by that time, we believe the suggested language above would serve to reinstate any recommendation that had been in dispute.

We understand that you will continue to consider what form any consultation among the Commission's members should take. If a public meeting is necessary, it may suffice to provide notice on the Commission's web site, and then to have a conference call that is open to the public. Other options may also be available.

Finally, we believe there is a substantial strategic benefit to sending the report to the President as early as possible on Thursday, September 8. Doing so would be consistent with the commitment (expressed in declarations submitted to district courts) that the Commission would not transmit the report before September 8. And sending the report early in the day minimizes the opportunity for any other courts to intervene during the day on Thursday, September 8, as an injunction against the Commission would be moot if it were entered after the report has been transmitted to the President. We have discussed the possibility that DOJ and Commission counsel should confer by telephone at 9:00 a.m. on Thursday to determine whether any injunctions are pending, and suggest that the letter could be finalized at that time based on the current state of litigation, with a goal to transmitting the report (and any letter, if necessary) as soon as possible thereafter. Any delay increases the risk that additional injunctions could be entered before the report is transmitted to the President, further complicating efforts to ensure both compliance with judicial orders and fulfilling the Commission's mission.

Please let me know if I can offer any additional suggestions, or if you would like to discuss these alternatives.

Thank you,
Tom Byron

H. Thomas Byron III
Civil Division, Appellate Staff
U.S. Department of Justice
Room 7260
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

ph: 202-616-5367
fx: 202-514-8151

H.Thomas.Byron@usdoj.gov

I have attached what is a near-final version of the Commission recommendation on Oceana NAS. Your thoughts about the GAO language will be appreciated. We are fast closing on the target.

David

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

From: David A Mayfield [mailto:MayfieldD@gao.gov]
Sent: Tuesday, August 30, 2005 3:54 PM
To: David.Hague@wso.whs.mil
Subject: Re: NEW WORDING

Mr. Hague,

We would be glad to offer alternative language, if necessary to avoid a problem. However, we still have not seen a copy of the current draft language to determine if alternative language is needed. We only surmise from the hearings last week that a Chadha issue could be present.

v/r

Dave Mayfield

>>> "Hague, David, CIV, WSO-BRAC" <David.Hague@wso.whs.mil> 8/30/2005
>>> 3:33 PM >>>

Dan Cowhig has kept me informed of the the GAO oversight issue. In your earliest email you suggested alternative language. Can you send that to me.

Thanks. We appreciate you noticing the problem and offering to help.

David
GC

Hague, David, CIV, WSO-BRAC

to extent Congress believes there

From: David A Mayfield [MayfieldD@gao.gov]
Sent: Wednesday, August 31, 2005 2:17 PM
To: David.Hague@wso.whs.mil
Cc: John W Van Schaik; dan.cowhig@wso.whs.mil
Subject: RE: NEW WORDING

*is a legal
impairment
now out intent
of Commission*

Mr. Hague,

Thanks again for allowing GAO to review the language of the recommendation on Oceana. I suggest we have a telephone conversation about the concerns we have identified with this language, and the implications of those concerns. I am available this afternoon to discuss them with you. We have a meeting with the Comptroller General scheduled for tomorrow morning to discuss the status of the BRAC recommendations and any potential GAO role in reviewing the implementation of them.

Several of the key GAO officials who would be involved in a GAO review of the BRAC implementation process have conducted an initial review of the Oceana recommendation and we have noted several legal concerns that we want to discuss with you as soon as possible. Those concerns focus on the following issues:

1. We can not identify the legal authority for the BRAC Commission to, in effect, direct the Comptroller General, an officer of the legislative branch, to perform the actions specified in the recommendation. We had anticipated that any GAO role in reviewing the implementation of the BRAC recommendations would be included in the Commission report as a recommendation for Congress, in subsequent legislation, to direct GAO to take some action.
2. We can not identify the legal authority for GAO to perform a review of the State actions prescribed in the recommendation. GAO audit authorities found primarily in Title 31, Chapter 7, United States Code, are generally limited to reviewing federal agency programs or activities associated with federal funding. Without clear authority to review state actions from Congress, we do not see how GAO could perform these reviews or certifications.
3. We also have concerns about the constitutionality of requiring GAO to certify compliance with the requirements stated in the Oceana recommendation. Particularly in regard to GAO certifying to the President that certain States have satisfied the prescribed requirements. Such a role seems to fall squarely within the holding in the *Bowser v. Synar* (478 U.S. 714 (1986)) decision ruling that - requiring the Comptroller General to perform an executive branch function is improper since the Comptroller General is removable by Congress and such an arrangement would in effect constitute an impermissible congressional veto.

I would be glad to discuss these concerns with you as well as the litigation implications the GAO role in the recommendations, as written, are likely to engender.

v/r

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Dave Mayfield,



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2005 BRAC Definitions

BASE CLOSURE LAW

The provisions of Title II of the Defense Authorization Amendme Base Closure and Realignment Act (Pub. L. 100-526, 102 Stat.2 U.S.C. S 2687 note), or the Defense Base Closure and Realignn of 1990 (Pub. L. 100-526, Part A of Title XXIX of 104 Stat. 1808, U.S.C. S 2687 note).

BRAC

"BRAC" is an acronym which stands for base realignment and cl is the process DoD has previously used to reorganize its installa infrastructure to more efficiently and effectively support its forces increase operational readiness and facilitate new ways of doing. DoD anticipates that BRAC 2005 will build upon processes used previous BRAC efforts.

Closure

All missions of the installation have ceased or have been relocat personnel positions (military, civilian and contractor) have either eliminated or relocated, except for personnel required for caretal conducting any ongoing environmental cleanup, and disposal of base, or personnel remaining in authorized enclaves.

COBRA

Cost of Base Realignment Actions (COBRA), is an analytical tool calculate the costs, savings, and return on investment, of propos realignment and closure actions.

Commission

The Commission established by section 2902 of the Defense Ba Closure and Realignment Act of 1990, as amended.

Community preference

Section 2914(b)(2) of BRAC requires the Secretary of Defense to consider any notice received from a local government in the vicir military installation that the government would approve of the clc realignment of the installation.

Data certification

Help for Military Families (pdf)
Office of Economic Adjustment
Office of Force Transformation
Army BRAC
Air Force BRAC

Section 2903 (c)(5) of BRAC requires specified DoD personnel to the best of their knowledge and belief that information provided to the Secretary of Defense or the 2005 Commission concerning the realignment or closure of a military installation is accurate and complete.

Force structure

Numbers, size and composition of the units that comprise US defense forces; e.g., divisions, ships, air wings, aircraft, tanks, etc.

Infrastructure Executive Council (IEC)

One of two senior groups established by the Secretary of Defense to oversee and operate the BRAC 2005 process. The Infrastructure Executive Council, chaired by the Deputy Secretary of Defense, composed of the Secretaries of the Military Departments and the Secretaries of Services, the Chairman of the Joint Chiefs of Staff and Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)), is the policy making and oversight body for the entire BRAC 2005 process.

Infrastructure Steering Group (ISG)

The subordinate of two senior groups established by the Secretary of Defense to oversee and operate the BRAC 2005 process. The Infrastructure Steering Group, chaired by the Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)), and composed of the Vice Chairman of the Joint Chiefs of Staff, the Military Department Assistant Secretaries for installations and environment, the Service Chiefs, and the Deputy Under Secretary of Defense (Installations and Environment) (DUSD(I&E)), will oversee joint cross-service analyses of common business-oriented functions and ensure the integration of the BRAC process with the Military Department and Defense Agency specific analyses of all other functions.

Military Departments

The Military Departments are the Department of the Army, Department of the Navy, which includes the Marine Corps, and Department of the Air Force.

Military installation

A base, camp, post, station, yard, center, homeport facility for air or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility primarily for civil works, rivers and harbors projects, flood control projects not under the primary jurisdiction or control of the Department of Defense.

National Environmental Policy Act (NEPA) Analysis

An analysis conducted to evaluate an installation's disposal decisions in terms of the environmental impact. The NEPA analysis is useful in the community's planning efforts and the installation's property disposal decisions. It is used to support DoD decisions on transferring property for community reuse.

Realignment

Includes any action that both reduces and relocates functions and personnel positions, but does not include a reduction in force requirements.

from workload adjustments, reduced personnel or funding levels imbalances.

Redevelopment authority

In the case of an installation to be closed or realigned under the authority, the term "redevelopment authority" means an entity (in an entity established by a State or local government) recognized Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of such plan.

Redevelopment plan

In the case of an installation to be closed or realigned under the authority, the term "redevelopment plan" means a plan that (A) is developed by the local redevelopment authority with respect to the installation and (B) provides for the reuse or redevelopment of the real personal property of the installation that is available for such reuse or redevelopment as a result of the closure or realignment of the installation.

Secretary

Secretary of Defense.

Transformation

According to the Department's April 2003 Transformation Planning Guidance document, transformation is "a process that shapes the changing nature of military competition and cooperation through combinations of concepts, capabilities, people and organizations exploit our nation's advantages and protect against our asymmetric vulnerabilities to sustain our strategic position, which helps underwrite peace and stability in the world."

United States

The 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.