

JUN. 21 '2005 10:55

#0216 P.002/002

SOLOMON P. ORTIZ
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Congress of the United States
House of Representatives
Washington, DC 20515-4327

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June 21, 2005

Mr. David Hague
General Counsel
Base Realignment and Closure Commission
Polk Building
Suite 600
2521 South Clark St., Arlington, VA, 22202

Dear Mr. Hague:

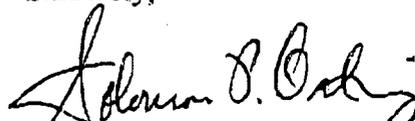
I would like to thank you for taking the time from your busy schedule and meeting with me recently regarding the status of Commissioner recusals and their impact on Commission voting procedures. I am writing to confirm my understanding of our discussion on these issues.

During the meeting you stipulated that Commissioner Gehman and Commissioner Coyle had recused themselves from deliberations and voting on the Department of Defense (DoD) recommendation of Closure and Realignment of Naval Station (NAVSTA) Ingleside and Naval Air Station (NAS) Corpus Christi (BRAC Report Vol. IV, Attachment A-3). You also stated that the Commission voting procedures required five votes to approve a DoD recommendation regardless of the number of recusals associated with that vote. Therefore, it would require five of the available seven Commissioners voting on the NAVSTA Ingleside and NAS Corpus Christi recommendation to approve its implementation.

I am requesting that you validate my understanding of our meeting and the voting procedures associated with the NAVSTA Ingleside and NAS Corpus Christi recommendation. If you have any questions, please contact Mr. Gordon Turner on my staff, at (202) 225-7742.

With kindest regards, I am

Sincerely,


Solomon P. Ortiz
Member of Congress



FAX TRANSMISSION
Congressman Solomon P. Ortiz
 2470 Rayburn
 Washington, DC 20515
 202-225-7742
 Fax: 202-226-1134

Attention: David Hague Date: 21 June 2005
 Agency: BRAC Commission Time: _____
 Fax #: 703 699-2735 Pages: C+1
Including cover sheet.
 From: Gordon Turner

Message or instructions: Mr. Hague,
Follow-up to meeting last week to
confirm our understanding of discussion.

vr, Gordon Turner

The Honorable Solomon P. Ortiz
Member of Congress
2470 Rayburn House Office Building
Washington, DC 20518-4327

Dear Representative Ortiz:

You have asked in your letter to me of June 21, 2005, to validate your understanding of certain matters we discussed in your office on June 16, 2005. You asked specifically about the Base Closure and Realignment (BRAC) Commission voting procedures associated with the Secretary of Defense's recommendations regarding Naval Station Ingleside and Naval Air Station Corpus Christi.

Principal guidance for BRAC proceedings is contained in the Defense Base Closure and Realignment Act of 1990 (as amended), which provides, relevant to your question, the following:

- The Commission may make changes in any of the recommendations made by the Secretary if the Commission determines that the Secretary deviated substantially from the force-structure plan and final criteria in making his recommendations.
- The Commission may not consider making a change in the recommendations of the Secretary that would add a military installation to the Secretary's list of installations recommended for closure or realignment unless . . . the decision to add the installation for Commission consideration is supported by at least seven members of the Commission.
- The Commission may not make a change in the recommendations of the Secretary that would close a military installation not recommended for closure by the Secretary, would realign a military installation not recommended for closure or realignment by the Secretary, or would expand the extent of the realignment of a military installation recommended for realignment by the Secretary unless the decision of the Commission to make the change . . . is supported by at least seven members of the Commission.

With the exception of the seven-of-nine vote requirement (unique to the 2005 BRAC), no guidance is provided in the statute for voting, such as what constitutes a quorum or majority. At its May 19, 2005 hearing, the 2005 BRAC

Commission, following the practice of prior BRAC Commissions, adopted the procedural rules available on our website, www.BRAC.gov. The rules have changed very little in the succession of BRAC Commissions. Addition of the seven-of-nine vote requirement to consider and add bases to the Secretary's list has been the only significant modification to the rules.

Highlights of the BRAC Commission rules are:

- The Commission can meet at the call of the chairman or at the request of a "majority of the commissioners then serving."
- One or more commissioners can hold a public hearing, but five of nine "commissioners serving at that time" would have to be present to act on any closure or realignment recommendation.
- Seven of nine "commissioners serving at that time" would have to be present to consider and act to close an installation not recommended for closure by the Secretary, realign an installation not recommended for closure or realignment by the Secretary, or expand the extent of the realignment of an installation recommended for realignment by the Secretary.
- Any other issues that may arise during Commission meetings or hearings (motion to adjourn, extend time, etc.) are resolved "by a simple majority of commissioners present."

The first three situations described above specify that the number of commissioners required to act is:

- a "majority of the commissioners then serving" or
- five of nine "commissioners serving at that time" or
- seven of nine "commissioners serving at that time."

The fourth situation described above requires "a simple majority of commissioners present."

"Majority of the commissioners then serving" and "commissioners serving at that time" can only be understood to mean the full complement of commissioners, which is nine commissioners. Accordingly, so long as there are nine commissioners serving (the number eligible to vote is not relevant), the votes of at

least five commissioners are always required to approve or disapprove recommendations by the Secretary or Commission.

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.

You asked also about the recusals of Commissioners Coyle and Gehman and the impact of those recusals on BRAC Commission voting on the Secretary of Defense's recommendations regarding Naval Station Ingleside and Naval Air Station Corpus Christi. If the recommendation is approved by the Commission, the two bases will lose personnel and assets that will relocate to bases in Virginia and California.

To avoid even the appearance of lack of impartiality and to enhance the public's confidence in the BRAC process, Commissioners Coyle and Gehman disqualified themselves from deliberating and voting on matters directly relating to installations in their home states of California and Virginia respectively. They recused themselves in accordance with a binding ethics agreement that all commissioners signed during the vetting process associated with their nominations. The agreement provided, inter alia, that commissioners who

participated in state, BRAC-related activity cannot deliberate or vote on matters relating to installations in their home states or to installations in others states that are substantially affected by closures and realignments of installations in their home states. Both Commissioner Coyle and Gehman participated in state, BRAC-related activity.

I appreciate the opportunity to meet with you and your staff and to provide this additional information. I have advised Chairman Principi of our meeting and the substance of our discussions. He is pleased that we could be of assistance to you. We remain available if you have any additional questions or concerns.

Sincerely,

David C. Hague
General Counsel