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United States Senate

WASHINGTON, DC 20510

August 3, 2005

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

Dear Mr. Secretary:

On 19 July 2005, the Air Force replied to an inquiry from the Base Realignment and Closure Commission concerning ongoing litigation and court imposed constraints on the use of a key military operating area (MOA) and military training route (MTR) that serves the aerial training requirements for both Dyess and Barksdale AFB. I found the Air Force reply to be both disappointing and unresponsive to the commission's questions. Frankly, I find it distressing that the Air Force would apparently misrepresent the status of the litigation and attempt to mislead the Commission by suggesting that the constraints were "voluntarily" self-imposed.

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

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

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The Air Force was also misleading when it stated that "it proposed *lowering* its training altitude to 300 feet AGL when it created the RBTI along an existing route," thus implying that 500 feet AGL was the normal training altitude on that same route. This statement is demonstrably false by the Air Force's own words. First, the Air Force originally proposed the RBTI route to be as low as 200 feet AGL, which was the minimum altitude of some route segments for the pre-existing IR-178. This fact is well documented in the Air Force ROD on page 7 point (2) of the "Management Actions." The Air Force, in fact, raised it to 300 feet AGL when drafting the ROD to address "public expressed concerns."

This litigation has been ongoing for years. The court clearly has oversight of the matter. Yet, the Air Force reply to the Commission states that " [N]one of the court's rulings require the Air Force to return to court for approval as part of this process." This ignores several facts. First, the case is still subject to appeal. If the Air Force wants the court to relinquish jurisdiction and authority in the matter, they will have to apply to the court for a dismissal. Second, even a casual review of the history of this case reflects the persistence of the plaintiffs. Any perceived flaws in subsequent Air Force or FAA decision-making on the RBTI may, and likely will, be challenged in court. The plaintiff groups have achieved one victory and if the Commission approves the consolidation of the B-1B fleet at Dyess AFB, with the consequent doubling of B-1B training operations, these plaintiffs will have yet another target rich environment for years of future litigation.

The rather cavalier attitude displayed by the Air Force in responding to the BRAC commission, implying that this litigation will be over (and that air operations will be unconstrained) when the Air Force and FAA complete their supplements does not reflect the history of the litigation or the implications of doubling the B-1B fleet at Dyess AFB. Indeed, the court has yet to even be informed by the Air Force that the number of B-1Bs and the training requirements at Dyess AFB may, in fact, double if the BRAC recommendation stands, though a supplemental EIS is underway per the court's order. It is clear that increased training operations flown from Dyess, would only exacerbate the adverse environmental impacts on the plaintiffs, while still under the aegis of the court and completely change the dynamics of the supplemental EIS now being prepared.

It also strikes me as somewhat presumptive on the part of the Air Force to state that if the results of the supplemental EIS do not support operations at 300 feet AGL, "the 500 feet restriction will most likely apply." I am curious to know how the Air Force can be so certain as to the final outcome and what restrictions might apply, before the supplemental EIS has even been completed, and any subsequent plaintiff challenges to the department's analysis have been heard.

Please understand, I am not advocating the consolidation of the nation's B-1B fleet at Ellsworth AFB, as an alternative to Dyess AFB. To the contrary, I believe it to be in this country's best interest to maintain the two separate B-1B bases we now have – in terms of preserving their security, operational effectiveness and overall quality of training. As we present our arguments and evidence to the BRAC Commission to support that position, we will not, in any way, seek to intentionally mislead or distort the

DCN 8433

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

Sincerely,

John Thune
United States Senator

SECRETARY OF THE AIR FORCE
WASHINGTON

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23 AUG 2005

The Honorable John Thune
United States Senate
Washington, DC 20510-4105

Dear Senator Thune:

Thank you for your letter and call regarding Base Realignment and Closure (BRAC) recommendations and litigation regarding the Realistic Bomber Training Initiative (RBTI). I want to address the two overarching concerns expressed in your letter and our conversation: that the Air Force responses to the BRAC Commission did not adequately address the impact of the RBTI litigation on Air Force operations, and that the Air Force did not adequately address the litigation impacts in its BRAC recommendations. Let me assure you the Air Force is committed to providing full and complete information to the Commission, and I regret any perception that our responses have been less than complete. I hope this letter and the discussions by our staffs help allay any unfortunate misperceptions that may exist regarding these issues.

I understand your concern about the potential impact of litigation, and I believe the Air Force is accurately assessing the impact of the RBTI litigation on its ongoing operations. The RBTI is a unique and critical component of the multiple training opportunities near Dyess Air Force Base (AFB), and we take the litigation challenging our environmental analysis under the National Environmental Policy Act (NEPA) very seriously. As you know, the Air Force won the initial phase of the lawsuit in the District Court. On appeal, the Fifth Circuit Court of Appeals upheld the Air Force's Environmental Impact Statement (EIS) on all but two procedural grounds, and ordered the Air Force to perform a supplemental EIS to correct the record regarding its study of wingtip vortices and how certain comments by the FAA were addressed. As with other cases where courts have remanded a decision for NEPA deficiencies, once that supplemental EIS is completed, the Air Force and FAA will proceed with a new decision with no necessity to seek or obtain the approval of any court before that new decision goes into effect. Although future litigation challenging that new decision is always a possibility, we firmly believe our analysis in the Supplemental EIS will ensure compliance with NEPA.

On January 5, 2005, after the Court of Appeals decision was issued (but before it was final), the Air Force requested the Court exercise its discretion to allow continued use of the RBTI during completion of the supplemental EIS, and in support of that motion the Air Force informed the Court it would issue a directive stating aircrews will fly no lower than 500 feet above ground level (AGL) when utilizing IR-178, and no lower than 12,000 feet above mean sea level (MSL) for the Lancer Military Operating Area (MOA). That Directive was issued on January 12, 2005. As noted in your letter,

the Air Force also submitted affidavits from its Air Combat Command (ACC) to the Court identifying the adverse impacts that would result if the Court denied the motion and refused to allow use of the RBTI. The affidavits confirmed that continued use within the operational parameters adopted in the Air Force's January 12 directive would still allow aircrews to "continue training as realistically as possible." This is true even though use pursuant to those parameters may not fully meet the standards applicable at that time for low-level realistic training on IR-178. The Fifth Circuit granted the Air Force request, and remanded the case to the District Court to determine what operational conditions should be established. On June 29, 2005, the District Court adopted the January 12 flight procedures (as the Air Force had requested) as an enforceable part of its Order.

In the interim, apart from any litigation but as part of the normal periodic operations review process, Air Combat Command revised its low-level bomber training policy. In April of 2005, ACC issued a Directive establishing 500 feet as the minimum B-1 bomber low-level altitude for realistic training nation-wide (with certain exceptions for test crew flights). Moreover, because IR-178 is exclusively low-level training, the Lancer MOA rounds out crew training requirements by affording high altitude training well above 12,000 MSL. Thus, in accordance with current Air Force Directives and the District Court Order, the Air Force continues to provide effective and realistic training in the IR-178 low-level route and Lancer MOA. Although the plaintiffs appealed the District Court's Order on August 11, 2005, the Order remains in effect during the pendency of the matter, and the Air Force believes that Order should withstand the appeal. In any event, by their own terms the District and Circuit Court orders will terminate once the new decision is issued upon completion of the supplemental EIS, which will occur well before any realignments take place. As noted above, our intent is to be prepared to withstand any additional litigation concerning the new decision.

Finally, I would like to assure you that appropriate consideration was given to the potential impacts of this litigation on base closure and realignment recommendations. The low-level airspace component of the military value metric for bomber installations identified all low-level airspace within 300 nautical miles of each installation without regard to the varying minimum or maximum altitudes within that airspace (such as those embodied in the Air Force Directives and the District Court Order). The greater the amount of airspace within that radius, and the closer the airspace is to the installation, the better the score.

The Base Closure Executive Group (BCEG) was aware of the RBTI litigation, but since the litigation did not prevent the use of IR-178, in the judgment of the BCEG it did not detract from the base's value or cause concern for future operations. Furthermore, while we will perform an appropriate environmental analysis of all of the potential impacts from any realignments that ultimately become effective, under current operational conditions and utilization it appears that the RBTI can, if necessary, absorb the number of additional sorties that might result from the recommended realignments. Historical training records show that operational squadrons fly a significantly lower rate of sorties at the RBTI than training squadrons do. Therefore, the addition of operational

squadrons from Ellsworth would not "double" the number of missions flown at the RBTI or significantly "change the dynamics" of the supplemental EIS process as your letter suggests.

I appreciated the opportunity to speak with you and discuss your concerns on this matter, and I understand we may have a genuine difference of opinion regarding our assessment of the impact of the RBTI litigation. Nevertheless, I am confident the Air Force has thoughtfully exercised its judgment, and has made and will continue to make every effort to ensure that its responses to the Commission on these issues are straightforward and complete. I remain ready and willing to engage with you or your staff at your convenience to further discuss your concerns.

Sincerely,

Pete Geren
Acting Secretary of the Air Force