

Clearinghouse:

Ref Dyess AFB, TX.

Attached memo was submitted to the BRAC. It outlines litigation filed by the Davis Mountains Trans-Pecos Heritage Association against the Air Force (Davis Mountains v. USAF).

The case centers on the adverse impacts to the community and organizations when B-1 Bombers use the Dyess LANCER Military Operation Area (MOA) and Instrument Route (IR) 178 (also know as the Realistic Bomber Training Initiative (RBTI)). The suit has resulted in a district court order issued on 29 Jun 05 imposing flying restriction on B-1s at LANCER and IR 178. The order reads: " no aircraft will fly lower than 500 ft AGL (Above Ground Level), AP/1B altitude in IR-178, and no lower than 12,000 ft MSL (Mean Sea Level) when utilizing Lancer MOA."

In reviewing the information, the training restrictions were suggested by Air Combat Command as temporary measures to the court until the litigation is resolved. The rationale being that it at least preserves the opportunity, even if limited, for use of the RBTI (reference: Additional Declaration of ACC Director of Air and Space Operations (Case No 03-10506) dated 5 Jan 05).

Given this litigation we request feedback on the following questions:

1. Given the importance of training ranges and IR routes to the military value of an installation was this litigation factored into the MCI for Dyess?
2. Why has the Air Force changed its training to 500 ft AGL when in the past it was 300 ft AGL? Was this caused by the above litigation?
3. Did an installation's score higher for those ranges that allow for flying at 200 ft AGL (given the fact that the B-1 has the capability to fly at 200 ft AGL and in some cases this is required for B-1 testing).
4. If the AF loses the suit and is permanently restricted to flying at 500 ft at the RBTI how will this impact B-1 training? This is a particular concern given the fact that the AF recommends consolidating the B-1 fleet at Dyess.
5. Request the Air Force rescore the MCI for Dyess training range and IR capability with this restriction.

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

### SUMMARY

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

### LITIGATION BACKGROUND

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

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

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

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

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

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

#### QUALITY OF TRAINING UNDER COURT ORDER

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

- As to the matters of military value, two major discrepancies are generated by the declarations. First, these proffered changes are characterized as temporary, implying that these limitations will be abandoned when the Supplemental EIS and resulting Record of Decision are completed. No doubt, this will be challenged in the courts by the plaintiffs when the Supplemental EIS is completed, unless the Air Force abandons the present location of the RBTI site. At a minimum, this represents substantial delay in final judicial approval, if such final approval can ever be obtained. The second declaration is an acknowledgement that the court accepted limitations are inadequate for Air Force training; "[T]he changes to the bomber training program, which would be in effect while the Air Force completes the SEIS and the FAA takes action accordingly, do not, in my opinion, allow aircrews to fully meet necessary realistic training objectives."

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

### FUTURE LITIGATION

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

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

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

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

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

## CONCLUSION

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

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

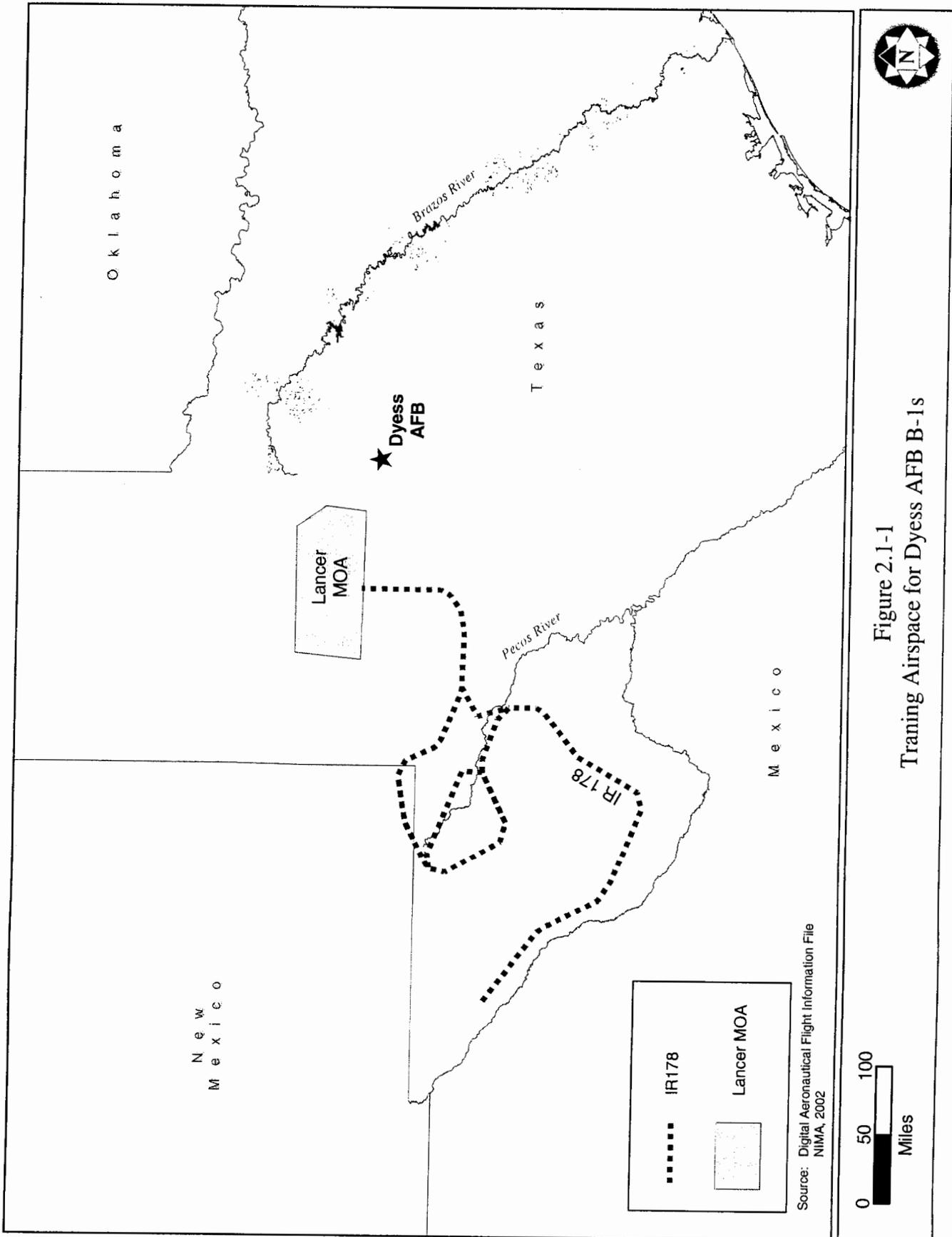


Figure 2.1-1  
Training Airspace for Dyess AFB B-1s