

BRAC/GC/dch  
June 17, 2005

MEMORANDUM FOR THE CHAIRMAN AND COMMISSIONERS  
DEFENSE BASE CLOSURE AND REALIGNMENT (BRAC) COMMISSION

Sub: COMMISSIONER PARTICIPATION IN DELIBERATIONS, REGIONAL AND  
OTHER HEARINGS, AND SITE VISITS

Ref: (a) Defense Base Closure and Realignment Act of 1990 (as  
amended)

Encl: (1) Procedural Rules of the 2005 Defense Base Closure and  
Realignment Commission  
(2) Memorandum to Commissioners of May 19, 2005  
(3) Adding Installations to the Secretary's List for  
Consideration and Review  
(4) BRAC definitions  
(5) Partial transcript of Commission May 19, 2005 hearing  
(6) Ethics agreement signed by all commissioners

1. The following discussion is provided to assist in a  
more complete and common understanding of the roles and  
responsibilities of the commissioners in the BRAC process.

**KEY STATUTORY PROVISIONS**

2. Principal guidance for BRAC proceedings is contained in  
reference (a), which provides, relevant to this discussion, the  
following:

- The Commission shall be composed of nine members (the 1988  
BRAC Commission had 12 members; other BRAC Commissions had  
eight members).
- The Commission may make changes in any of the recommenda-  
tions 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.

#### VOTING

3. With the exception of the seven-of-nine vote requirement (unique to the 2005 BRAC), no guidance is provided in the statute for voting - what constitutes a quorum, majority, etc. At its May 19, 2005 hearing, the 2005 BRAC Commission, following the practice of prior BRAC Commissions, adopted the procedural rules contained at enclosure (1). 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.

a. Highlights of the 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."

b. 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."

c. "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.

d. 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. A synopsis of the rules provided to the commissioners prior to their adoption at the Commission hearing of May 19, 2005 is contained at enclosure (2).

4. 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.

5. 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.

6. 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. A summary of the "adds" process is contained at enclosure (3).

7. Certain actions that were either taken or considered in the past that no longer have relevance to the BRAC process include: disestablishment, redirection, relocation, reopening and mothballing. These and other words important to understanding past and present BRAC processes are defined in enclosure (4).

#### **RECUSALS**

8. To avoid even the appearance of lack of impartiality and enhance the public's confidence in the BRAC process, four of our nine commissions have disqualified themselves by reason of real or perceived prejudice or conflict of interest from deliberating and voting on matters directly relating to installations in their home states.

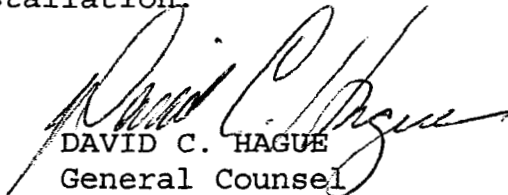
9. Commissioners Bilbray, Coyle, Gehman, and Hansen recused themselves at the Commission's May 19, 2005 hearing in order to place the impartiality of the Commission beyond question. (The applicable portion of the transcript from the hearing is contained at enclosure (5).) Commissioners Bilbray and Hansen recused themselves for reasons identical to those that prompted Senator Dixon to recuse himself in 1995 when he served as Chairman of that BRAC Commission. Commissioners Coyle and Gehman recused themselves as a consequence of a binding ethics agreement that all commissioners signed during the vetting process associated with their nominations. A copy of the agreement is contained at enclosure (6).

10. Commissioners Coyle and Gehman recused themselves because of their participation in BRAC-related activity in California and Virginia respectively. Commissioners Bilbray and Hansen recused themselves because of their long-time representation in the Congress and other public offices of Nevada and Utah respectively. As a result of their recusals, the commissioners 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.

11. Adopting a policy that controlled in past BRACs, the Chairman has determined that:

"When it is determined by the Commission's General Counsel that a commissioner has a potential conflict of interest and the recommended remedial measure is recusal in regards to a base, to avoid a conflict of interest or perception of a conflict, the Commission will adopt the following policy: the commissioners shall be prohibited from participation in any and all discussions, debate and actions regarding the base in question. Additionally, commissioners will not participate in any discussions, debate or actions involving bases that are being considered as substitutes to the first base in question. The prohibition regarding substitute bases will take effect the moment the additional base(s) is/are being considered as substitute(s) to the original base."

12. The Chairman has also determined as a matter of policy that we will make the greatest reasonable effort to minimize the number of direct and indirect conflicts but permit conflicted commissioners as necessary to participate in regional hearings (and site visits when the conflicted commissioner is not the only commissioner visiting). Participation is allowed even though the recused commissioners will be unable to deliberate and vote on all of the installations discussed at the hearings (site visits). Their direct exposure to as much information and as many concerned citizens as possible is recognized as being vitally important to the completion of the Commission task of open, fair, and comprehensive consideration of the final selection criteria, force-structure plan, and worldwide infrastructure inventory. Other commissioners at the hearing and staff will also gather data, so there is no real possibility that the recused commissioner(s) could be seen as filtering the Commission's view of an installation.

  
DAVID C. HAGUE  
General Counsel

## Procedural Rules of the 2005 Defense Base Closure and Realignment Commission

Rule 1. The Defense Base Closure and Realignment Commission ("Commission") was established by the Defense Base Closure and Realignment Act of 1990, Part A of Title XXIX of Public Law 101-510, as amended by Title XXX of the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, and further amended by Section 2822, Subtitle C, Title XXVIII, Division B, of Public Law 108-136 ("Act"). The Commission's operations shall comply with that Act, as amended, and with these Procedural Rules.

Rule 2. The Commission's meetings, other than meetings in which classified information is to be discussed, shall be open to the public. In other respects, the Commission shall comply with the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2, and the Federal Advisory Committee Management Final Rule, 41 Code of Federal Regulations Parts 101-6 and 102-3.

Rule 3. The Commission shall meet only during calendar years 2005 and 2006.

Rule 4. The Commission shall meet at the call of the Chairman or the request of a majority of the Commissioners serving at that time.

Rule 5. When the Commission meets to consider (a) the recommendations of the Secretary of Defense ("Secretary") submitted to the Commission in accordance with the Act, (b) the Commission's report to the President in accordance with the Act, or (c) a revised list of recommendations in accordance with the Act, a quorum shall consist of a majority of the members then serving. When the Commission meets to consider the closure of an installation not recommended by the Secretary for such action, or to consider the realignment of an installation that would result in a reduction in the force structure at that installation that was not recommended by the Secretary, a quorum shall consist of seven of the members then serving. When the Commission meets to conduct public hearings to receive public comment on the recommendations of the Secretary or the proceedings of the Commission, a quorum shall consist of one or more members designated by the Chairman.

Rule 6. When the Commission meets to consider (a) the recommendations of the Secretary submitted to the Commission in accordance with the Act, (b) the Commission's report to the President in accordance with the Act, or (c) a revised list of recommendations in accordance with the Act, and a quorum is present, a vote shall be required of the Commission to dispense with any of the above responsibilities or to ratify any acts of the Commission. The adoption of any action taken by the Commission with regard to (a) the recommendations of the Secretary submitted to the Commission in accordance with the Act, (b) the Commission's report to the President in accordance with the Act, or (c) a revised list of recommendations in accordance with the Act, will be by a majority of the members serving at that time. In the event of a tie vote on the adoption of any such action, the motion fails for lack of a majority. The adoption of any action taken by the Commission with regard to the closure of an installation not recommended by the Secretary for such action, or to consider the realignment of an installation that would

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result in a reduction in the force structure at that installation that was not recommended by the Secretary, will be by seven of the members then serving. The resolution of all other issues arising in the normal course of Commission meetings or hearings shall be by a simple majority of Commissioners present. The Commissioners shall vote in person, except when a proxy is exercised under Rule 9.

Rule 7. The Chairman shall preside at meetings and public hearings of the Commission when he is present. In the Chairman's absence, he or she shall designate another member of the Commission to preside.

Rule 8. The Chairman, or in his absence, the presiding Commissioner, shall have the authority to ensure the orderly conduct of the Commission's business. This power includes, without limitation, recognizing members of the public to speak, imposing reasonable limitations on the length of time a speaker may hold the floor, determining the order in which members of the Commission may question witnesses, conducting votes of members of the Commission, and designating Commissioners for the conduct of public hearings.

Rule 9. One Commissioner may designate another Commissioner to vote and otherwise act for the first member when he or she will be absent, but only where the first Commissioner has previously issued a written proxy to the second stating the specific, limited purpose for which the proxy is to be exercised. Where the margin of decision would be supplied by a proxy vote, the proxy shall be considered invalid and the matter under consideration shall be considered to have failed.

Rule 10. These rules may be amended by a majority vote of the Commissioners serving at the time.

BRAC/GC/dch  
May 19, 2005

MEMORANDUM FOR THE COMMISSIONERS  
BASE CLOSURE AND REALIGNMENT COMMISSION

Subj: PROCEDURAL RULES OF THE 2005 DEFENSE BASE CLOSURE AND  
REALIGNMENT COMMISSION

Encl: (1) Subject rules (proposed)

1. The enclosed procedural rules have been modified from the rules used by prior BRACs to include the most recent statutory changes, specifically the seven vote requirement to 1) consider adding an installation to the Secretary's list of installations recommended for closure or realignment and 2) actually place a proposed installation on the list to the President. The rules will at the direction of the Chairman be presented for adoption by the Commission at the administrative meeting to be conducted at the conclusion of the Thursday morning hearing.
2. The rules are brief and straightforward. This memorandum discusses several key points about them.

**a. Quorums**

For hearings held to receive public comment, a quorum shall consist of one or more members designated by the Chairman.

When the Commission meets to consider:

- the recommendations of the Secretary of Defense
- the Commission's report to the President, or
- a revised list of recommendations for closures and realignments (except "additions" discussed below)

a quorum shall consist of a majority of members serving at that time.

Discussion

One or more Commissioners can hold a hearing, but at least five (5) of nine (9) Commissioners must be present for the Commission to consider and act on any closure or realignment recommendation, except for "additions." An "addition" to the Secretary's list is the closure of an installation not recommended by the Secretary for such action or the realignment of an installation that would result in a reduction in the force structure of that installation that was not recommended by the Secretary. In such cases, a quorum shall consist of seven (7) of the members then serving.

**b. Voting**

The rules require that when the Commission meets to consider:

- the recommendations of the Secretary of Defense

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- the Commission's report to the President, or
- a revised list of recommendations for closures and realignments

Once a quorum has been established, "a vote shall be required of the Commission to dispense with any of the above responsibilities or to ratify any actions of the Commission."

The rules continue to provide that any action taken by the Commission concerning these three areas of the Commission responsibilities "will be by a majority vote of the Commission serving at that time." (Except as discussed above for "additions.")

The rules allow for any other issues that may arise during Commission meetings or hearings to be resolved by a "simple majority of Commissioners present."

The rules allow for Commissioner to vote in person or by proxy. (See discussion on proxies below.)

#### Discussion

The votes of a majority of the Commissioners are required to make any changes to the Secretary's list, except "additions," for which seven (7) votes are required. A tie vote on a motion to drop an installation from the Secretary's list or otherwise change his recommendations means that the motion would fail, and the Secretary's recommendations would prevail.

#### **c. Proxies**

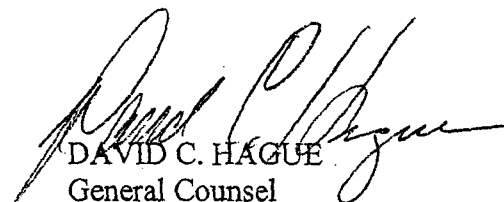
The rules allow proxy voting.

Under Rule 9, a Commissioner may designate another member to vote and otherwise act for the first member when he or she will be absent. However, the absent Commissioner must "issue a written proxy stating the specific or limited purposes for which the proxy can be exercised." Rule 9 also provides that "Where the margin of decision would be supplied by proxy vote, the proxy shall be considered invalid and the matter under consideration shall be considered to have failed."

#### Discussion

The rule on proxy voting allows a Commissioner who might be ill or for other compelling reasons unable to attend a meeting to cast a vote. There is no indication in BRAC records that proxy votes have ever been cast.

Blanket proxies are not allowed. The rule requires "a written proxy stating the specific or limited purpose for which the proxy can be exercised." An absent Commissioner cannot give to another Commissioner the ability to vote a proxy on an issue in any way the Commissioner determines appropriate at the time.

  
DAVID C. HAGUE  
General Counsel

## ADDING INSTALLATIONS TO THE SECRETARY'S LIST FOR CONSIDERATION AND REVIEW

The steps below apply to changes by the Commission to the Secretary of Defense's list of military installations recommended for closure or realignment that would add an installation for closure and/or realignment or expand the extent of a realignment already recommended by the Secretary.

If, after review and analysis of certified data received from the Department of Defense, information obtained during base visits and regional hearings, and other public input, and consideration of the Comptroller General's report submitted on 1 July, there are quantifiable reasons that the Commission wants to consider and review making changes in the recommendations of the Secretary of Defense that would add military installations to the Secretary's list of installations recommended for closure or realignment, then, according to controlling law:

- The Secretary of Defense is notified of the possible additions to his list and is given 15 days to submit an explanation why the installations were not on it.
- Commissioners vote in public session after receiving input from the Secretary of Defense and if seven commissioners vote to add installations then they are added to the Secretary's list.
- Notice of proposed additions to the Secretary's list is published in the Federal Register at least 45 days before 8 Sep 2005.
- At least two commissioners conduct installation visits and public hearings on the proposed additions.

Then the Commission must, in order to actually place the proposed additions on the list to the President:

Determine that the Secretary deviated substantially from the force-structure plan and final selection criteria, and

Determine that the additions being considered are consistent with the force-structure plan and final selection criteria.

Furthermore, the following applies:

- Commissioners vote in final deliberations on each installation, including additions.
- Seven commissioners must agree on additions.
- Only a simple majority (of the members serving) is required for approval and disapproval of closures and realignments recommended by the Secretary.
- A quorum (that is the number of commissioners required to be present for the Commission to vote and transact other business) is five commissioners.

Encl (3)

## BRAC DEFINITIONS

Closure -- defined by DoD as "All missions of the installation have ceased or have been relocated; personnel positions (military, civilian and contractor) have either eliminated or relocated, except for personnel required for caretaking, conducting any ongoing environmental cleanup, and disposal of the base, or personnel remaining in authorized enclaves." In a closure, all missions carried out at a base either cease or relocate.

Realignments -- defined in the BRAC statute as "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." In realignment, a base remains open but loses and sometimes gains mission.

Disestablishments and relocations refer to missions; those disestablished cease operations, while those relocated are moved to another base.

Redirections refer to cases in which the BRAC Commission changes the recommendation of a previous commission. (Unlikely with us, since the last commission was in 1995.)

EXTRACT FROM THE TRANSCRIPT OF THE MAY 19, 2005 PUBLIC MEETING OF  
THE BASE CLOSURE AND REALIGNMENT COMMISSION

ADMIRAL GEHMAN: Next item, administrative item. I'm going to say a few things about my prior involvement in BRAC-related activities and how those activities will impact my work as a commissioner. It's a matter of public record that I served for a time in a non-paid advisory capacity to the Governor of the Commonwealth of Virginia, helping the governor develop and understanding the BRAC process and devise an appropriate game plan for providing an input to the BRAC process at the state and local level. These activities, by the way, the activities of retired senior offense officials, working with local communities to assure the decisions of the Department of Defense and the BRAC Commission are informed by the best possible data are essential to the work of this Commission. This Commission would not be doing its job if we did not go out and get public input and listen very carefully to their insights, observations and criticisms. Once I was nominated to this Commission, I immediately resigned from the Governor of Virginia's Advisory Commission; but because of my prior work for the Governor of Virginia regarding the BRAC process, I believe that it's in the best interest of the Commission for me to recuse myself from any substantial participation for any decisions involving Virginia military facilities and from any substantial participation in any decisions involving any facilities which are proposed to be realigned in favor of the Commonwealth of Virginia. I understand that the law does not require me to take this step, but I believe that this recusal is necessary to ensure the public's confidence in the BRAC Commission's work. I don't want even the appearance of an impropriety to in any way affect the Commission's final recommendations. This process is far too important and involves far too many people.

MR. HANSEN: Thank you, Mr. Chairman. I too have a recusal. I've served the people of Utah for forty-two years; twelve years as a city councilman, eight years as a legislator, two years as speaker of the house, and my last twenty-two years as a member of Congress. My role now as a member of the Base Closure and Realignment Commission requires that I set aside any special interest in my home state to represent the nation as a whole. I must be beyond

ENCL (5)

challenge regarding my fairness and impartiality. Because of the importance of public confidence in our work and to avoid even the appearance of conflict of interest, I am recusing myself from substantial participation in any part of the BRAC process that should affect any installation in the State of Utah. Thank you, Mr. Chairman.

ADMIRAL GEHMAN: Thank you, Mr. Hansen. Mr. Bilbray.

MR. BILBRAY: Yes. Mr. Chairman, I have some of the same problems Congressman Hansen has. I advocated for the State of Nevada for many years as a member of the Nevada State Senate and in the United States Congress. Therefore, in advice of the Ethics Council to our Commission, I am recusing myself from any substantial work in regard to the State of Nevada in these particular deliberations.

ADMIRAL GEHMAN: Thank you very much. Anybody else? Mr. Coyle.

MR. COYLE: Thank you, Mr. Chairman. As you know, I served briefly on an advisory council formed by Governor Arnold Schwarzenegger, whose purpose was to help California communities understand and prepare for BRAC 2005. I resigned from that council as soon as I knew that I would be nominated to this commission. During my brief service on the council, I took no position one way or the other on which military base would be affected. Further, I did not participate in deliberations or votes resulting in recommendations or findings regarding specific California bases. Also, from what I've understood since leaving the council, the council made no recommendations regarding the closure or realignment of specific California bases. Nevertheless, I understand that my service on the council could be viewed as creating the appearance of a loss of impartiality regarding California. I've been a resident of California for most of my adult life; and all of our children were born or raised there. Accordingly, I will recuse myself from substantial participation relative to military installations in California. Mr. Chairman, it is my intent and commitment to conduct myself with integrity on the 2005 Defense Base Realignment and Closure Commission and to act in an independent, open, fair and impartial manner. Thank you.

ADMIRAL GEHMAN: Thank you very much. There's no more business. After a short recess, several members of the

Commission will be available to meet with the press. Thank  
you again, witnesses. Commission's adjourned.

3/8/05

This ethics agreement reflects my understanding of, and agreement to follow, the following rules regarding my membership on the Base Realignment and Closure Commission (BRAC), if confirmed for such membership.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to section 208(b)(1), or qualify for a regulatory exemption, pursuant to section 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse, minor children, or any general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Also, under 5 C.F.R. § 2635.502, I will not participate in any particular matter involving specific parties if a person or entity with whom I have a covered relationship is, or represents, a party, unless I am authorized to participate. Under the ethics rules, a Federal employee has a covered relationship with:

- Persons or entities with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;
- Members of the employee's household and relatives with whom the employee has a close personal relationship;
- Persons or entities for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
- Persons or entities for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or,
- Organizations, other than a political party, in which the employee is an active participant.

Additionally, in order to avoid an appearance of loss of impartiality that could arise from my participation in or representation of a state, local, or private-sector BRAC-related entity, I will not participate in any particular matter affecting that state, local or private-sector BRAC-related entity, or its geographic region, unless I am authorized to participate by BRAC's designated agency ethics official. This recusal will bar my participation in any particular matter regarding facilities whose forces, missions, or installations may be transferred to, as well as from, the geographic region of that state, local, or private sector BRAC-related entity.

ENCL (6)