

**From:** [Pollock, Gary](#)  
**To:** [Mike Morgan](#)  
**Subject:** Fwd: [EXTERNAL] Fwd: NPS Fee  
**Date:** Wednesday, May 2, 2018 5:19:39 PM  
**Attachments:** [ATT00001.htm](#)  
[Letter to Pollock at 5-1-18.docx](#)

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One other thing...

please address the letter to:

David Vela  
Superintendent  
Grand Teton National Park  
P.O. Box 170  
Moose, WY 83012

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**Gary M. Pollock**  
**Senior Advisor to the Superintendent**  
**Grand Teton National Park &**  
**John D. Rockefeller, Jr. Memorial Parkway**  
**(307) 739-3428**

----- Forwarded message -----  
From: **Jim Elwood** <[Jim.Elwood@jhairport.org](mailto:Jim.Elwood@jhairport.org)>  
Date: Wed, May 2, 2018 at 9:45 AM  
Subject: [EXTERNAL] Fwd: NPS Fee  
To: Gary Pollock <[gary\\_pollock@nps.gov](mailto:gary_pollock@nps.gov)>

Jim Elwood, A.A.E.

Begin forwarded message:

**From:** Mike Morgan <[mmorgan@lohshaiman.com](mailto:mmorgan@lohshaiman.com)>  
**Date:** May 1, 2018 at 6:58:51 PM MDT  
**To:** Jim Elwood <[Jim.Elwood@jhairport.org](mailto:Jim.Elwood@jhairport.org)>  
**Subject:** NPS Fee

Jim:

I spoke with Gary and he agreed to the approach which is set forth in the attached letter. It is still a bit rough. The last paragraph – dealing with 110% - is something I inserted and he did not suggest.

If you go with this approach, we are making a plausible interpretation of the 1983 Agreement. If you go with paying 10% more for each of the next three years, we are simply making stuff up.

We could always do a study of NPS costs to justify whatever the fee is. However, Gary is not concerned with that so long as the fees actually received don't get too large. This approach should do that.

I know it is long, but the length may be necessary to justify the approach.

J. Michael Morgan  
Lohf Shaiman Jacobs Hyman & Feiger PC  
950 S. Cherry Street, Suite 900  
Denver, Colorado 80246-2666  
Telephone: 303-753-9000 (ext. 227)  
Facsimile: 303-753-9997

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May \_\_\_, 2018

Gary Pollock, Management Assistant?  
Grand Teton National Park  
P.O. Box \_\_\_  
Moose, Wyoming 8\_\_\_

Dear Gary:

This letter is to seek the concurrence of the National Park Service regarding the treatment of anticipated revenues to be received by the Jackson Hole Airport Board from new facilities and operations at the Airport.

Basis of Existing Payment Obligation. A Fourth Amendment to the 1983 Agreement between the Interior Department and the Board was entered into in 2013. The parties agreed that the Airport's existence in the Park caused the Department to incur expenses which exceeded the amounts it was then receiving in accordance with the existing fee payment formula. They also agreed that the new fee formula set forth in this Fourth Amendment was necessary for the Department to recoup such expenses, but "did not exceed the value of the services actually received by the Board from the Department in relation to the Airport's existence and operation in the Park."

On that basis, the Fourth Amendment increased the fee payable to the NPS to 3% on the first \$4 million in operating receipts, and 4% on operating receipts in excess of \$4 million. The Fourth Amendment defines Operating Receipts, on which the NPS fee is payable, as follows:

"Operating Receipts" as used in this subparagraph shall mean those funds received by the Board as a result of operations carried on at the Airport, but shall not include federal, state or local grants, loan receipts, revolving funds, interest income, receipts from the Town of Jackson or Teton County, Wyoming, receipts from any contract to provide security screening or law enforcement services at the Airport, or other receipts described in the annexed **Attachment A** as not being subject to this fee.

**Attachment A**, which was attached to the 1983 Agreement, includes lists of types of revenue that are included and excluded from Operating Receipts. Expressly included on **Attachment A** are, (a) "License fees received from" any fixed base operator and rental car company, (b) "rental received from" food establishments, (c) "landing fees" received from landing aircraft and (d) "rental for the use of buildings or improvements" on the Airport. These examples of included receipts are those the Board receives in its inherent capacity as proprietor and operator of the Airport – those it receives "as a result of operations carried on at the Airport."

Expressly excluded from Operating Receipts are (a) "receipts from any contract to provide security screening" at the Airport, (b) reimbursements received by the Board for "providing security or maintenance services" and (c) receipts from the use of the Airport copy machine.

These examples of excluded receipts are those the Board receives when it provides services to others, much like a business would provide such services.

Receipts Generated from New Operations. The Board plans to have two new sources of receipts which were not contemplated when the Fourth Amendment was agreed to in 2013. In each case, the Board will be performing services which were previously provided by a private business.

1. The Board has entered into an Agreement to purchase the assets of Jackson Hole Aviation LLC. When the sale closes the Board will operate the sole FBO on the Airport. To finance this acquisition, the Board will issue a revenue bond, repayment for the bond will be through (and will be secured by) the new FBO revenues. The Board anticipates the FBO will function as an operating division, with the “FBO Division” continuing to pay the Airport Division (a) facility rent on the hangars, (b) fuel flowage fees payable as additional rent (12¢ for GA and 5¢ for air carriers), and (c) a fee equal to 10% of gross revenues from ramp operations. In this way, the “Airport Division” will receive no less revenue than it received from the FBO prior to the purchase. With the new fee on ramp operations, there should be an increase in fees payable to NPS after the closing of the FBO purchase.
2. The Board is also constructing a new state-of-the-art above-ground fuel facility to replace the current aging underground facilities. To finance this construction, the Board will issue a revenue bond, repayment for the bond will be through (and will be secured by) new per-gallon fees. At a minimum, these will be (a) a new 20¢ per gallon fee which will be absorbed by the “FBO Division” and will be included in the price of fuel delivered (we call it a “Fuel Facility Fee” or FFF), and a 5¢ per gallon fee which will be directly passed on to the fuel end user (we call this the “Fuel Facility Use Fee” or FFUF).

Proposal for Treatment of New Revenues. For the following reasons, the Board does not believe that these new sources of revenue should be considered “operating receipts” and thus included in the calculation of the 4% fee:

- A. Neither of these sources of revenue were anticipated when the Fourth Amendment was entered into. The Board believes that such revenues will not be received “as a result of operations carried on at the Airport,” within the meaning of the Fourth Amendment.
- B. Because of the high costs of construction, acquisition, and operation, the gross receipts from the from operation of the FBO and new fuel facility will be far in excess of the revenue which will actually be received by the “Airport Division.”
- C. Payment of the 4% fee on this new and unanticipated revenue would also result in payments to the Park Service which are grossly in excess of “the value of the services actually received by the Board from the Department in relation to the Airport’s existence and operation in the Park,” and would thus be impermissible.

- D. Rather than acquiring these revenue sources itself and operating them through an “FBO Division,” the Board could create a separate public corporation to operate them. In this way, only the existing rental and fuel flowage payments, and net revenues (or profits) from these operations, would flow to the Airport and thus form the body of “operating receipts” on which the 4% fee is paid.

We believe these affects can be avoided by simply agreeing to an interpretation of “operating receipts” which is consistent with the original intent of the Fourth Amendment. The Board proposes that upon its closing of the FBO purchase, and/or construction of the new fuel facility, to prevent an inequitable and unintended result, only the revenue which flows to the Board’s “Airports Division” should be considered to be received “as a result of operations carried on at the Airport” and thus counted as “operating receipts” within the meaning of the Fourth Amendment. More specifically, only the following which are generated by the FBO and/or the new fuel facility should be considered operating receipts:

1. Fuel facility rental payments made by the FBO Division to the Airport Division at the rate now paid by the FBO to the Airport for existing fuel facilities;
2. Hangar rentals due from the FBO Division to the Airport Division;
3. Proceeds of the 12¢ and 5¢ per gallon rental fees which are paid from the FBO Division to the Airport Division;
4. Percentage rent for ramp income by the FBO Division; and
5. All revenues of the FBO Division which are net of operating costs, acquisition costs for fuel and other materials, capital improvements directly related to the FBO and new fuel facility, and debt service related to construction of the fuel facility and acquisition of the FBO.

To ensure that the Board’s construction and operation of the new fuel facility, and acquisition of the FBO does not result in any unintended decrease in revenue to the NPS, the Board will agree that the amount payable shall never be less than 110% of the amount which was paid to the NPS in calendar year 2017.

Sincerely,

JACKSON HOLE AIRPORT BOARD

By: \_\_\_\_\_