

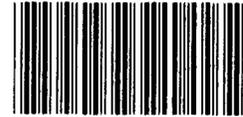
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Report to the Chairman, Subcommittee
on Oversight and Investigations,
Committee on Energy and Commerce,
House of Representatives

September 1992

NATIONAL PARKS

Issues Involved in the Sale of the Yosemite National Park Concessioner



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Resources, Community, and
Economic Development Division

B-249528

September 10, 1992

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

This report responds to your request that we review certain aspects of the sale of the Yosemite Park and Curry Company (Curry Company), the major concessioner supplying visitor services in Yosemite National Park, to an American purchaser. This sale was prompted by the Secretary of the Interior's concern about foreign ownership of the concession contract when the Curry Company's parent company, MCA, Inc., was acquired by Matsushita, Inc., a Japanese corporation, in November 1990.

Specifically, you asked that we determine (1) how the purchase price was established; (2) how the possessory interest of the Curry Company, that is, its right to be compensated for improvements it made in the park, will be extinguished; (3) whether the new concessioner will have sufficient revenues to pay a promissory note for the purchase price; (4) how the transaction will affect the implementation of the 1980 Yosemite General Management Plan (GMP), developed by the Department of the Interior's National Park Service, which contains actions to reduce congestion in the park; and (5) whether the National Park Foundation (Foundation), which acted as a middleman in the sale between MCA and the Park Service, had the authority to contract for the purchase of the Curry Company's stock from MCA.

Results in Brief

The agreed-upon purchase price of \$61.5 million—\$49.5 million plus accrued interest from February 1, 1991, to September 30, 1993, of \$12 million—was negotiated between the Foundation and MCA and approved by the Secretary of the Interior and the Director of the Park Service. According to Interior and Foundation officials, the purchase price was not based on any formal appraisal of the assets of the Curry Company, including its possessory interest in Yosemite National Park. Rather, the purchase price was based on MCA's asking price and the Park Service's estimates of projected cash flows from concession operations at Yosemite National Park.

The Curry Company, under a September 1991 amendment to its existing concession contract, agreed to relinquish its possessory interest upon payment in full of the agreed-upon purchase price. Until that time, the possessory interest will serve as security for the new concessioner's obligation to pay MCA the purchase price.

On the basis of cash flow projections prepared by the Park Service, it appears that the new concessioner will have sufficient revenues to cover operating expenses and note payments (if the new concessioner elects not to pay MCA cash for the Curry Company) and still make a reasonable profit.

The 1980 GMP for Yosemite National Park prescribed over 300 actions that would, among other things, make Yosemite Valley a less congested and developed area while emphasizing its natural beauty. The 1980 GMP is currently being revised, and what specific requirements the Park Service will impose on the new concessioner as part of implementing the GMP and the associated costs have not been finalized.

Finally, with regard to the authority of the Foundation to contract for the purchase of the Curry Company, the Foundation does not have the authority to participate in this transaction. The Foundation is a congressionally chartered corporation authorized only to accept and administer gifts to benefit the Park Service. This transaction does not result in a gift to the Foundation but is instead a complex business transaction among MCA, the Foundation, and Interior. The Foundation's involvement, however, appears to have been unnecessary to the completion of the transaction since Interior itself is authorized to enter into such transactions directly. In this particular case, the Foundation appears to have been acting on Interior's behalf.

Background

Yosemite is one of the country's oldest national parks. Set aside as a national treasure by the Congress in 1890, the park is known for its beauty and scenic grandeur. Located in east central California, Yosemite National Park encompasses about 750,000 acres and attracts over 3.5 million visitors annually.

The major concessioner at Yosemite National Park since 1963 has been the Curry Company. In 1973, MCA, Inc., acquired the Curry Company, and in November 1990, MCA was acquired by Matsushita, Inc., a Japanese corporation. Because the Secretary was concerned about foreign ownership of the concession contract at Yosemite, MCA came under

pressure to divest itself of the Yosemite concession contract. The Foundation, a nonprofit corporation chartered by the Congress on December 18, 1976, agreed to act as a middleman to work out an agreement between MCA and the Park Service for the sale of the Curry Company.

In November 1990, MCA offered to put the Curry Company in escrow for 12 months because of the controversy over foreign ownership of the Yosemite concession contract. Interior opposed the transaction for two reasons. First, Interior wanted to move more quickly than MCA's proposal envisioned. Second, Interior wanted to create greater competition in the awarding of a new Yosemite concession contract by extinguishing the Curry Company's preferential right of contract renewal¹ and the company's right to be compensated for the possessory interest in Yosemite National Park.

The September 20, 1991, purchase agreement between the Foundation and MCA provided for the Foundation to purchase, effective September 29, 1993, 100 percent of the Curry Company's stock for \$61.5 million. The agreement also provided for the Curry Company to waive its statutory right of contract renewal. The Foundation intends to assign its rights under the purchase agreement to the new concessioner. The purchase price is payable by a new concessioner beginning in October 1993, either in cash or in equal monthly installments over 15 years at an annual interest rate of 8.5 percent. Interior officials expect the new concessioner to choose the latter option.

The purchase agreement was made on the condition that MCA, the Curry Company, and the Park Service would amend the Curry Company's existing concession contract. The amendment provides that (1) the Park Service must require the new concessioner to make monthly payments to MCA out of concession revenues; (2) the Curry Company must relinquish its right to be compensated for its possessory interest; and (3) MCA may choose a substitute park concessioner, with Interior's approval, should the new concessioner default on its obligation to MCA.

On April 6, 1992, the Park Service issued a statement of requirements for prospective candidates who wanted to apply for the new Yosemite

¹Under the Concessions Policy Act of 1965, the Secretary of the Interior is to give preference to the renewal of a concession contract to concessioners who have satisfactorily performed their obligations. Under Interior's regulations, the preferential right of contract renewal is the right of concessioners who have performed satisfactorily to meet the best offer of firms competing for the concession contract.

concession contract. The purpose of the statement of requirements was to describe the services to be provided under the new concession contract and to identify potential applicants who (1) could command sufficient funds to run the concession and (2) had demonstrated the managerial ability to successfully run such a concession operation. Fifteen firms applied to subsequently bid on the new concession contract, and the Park Service found that 12 firms were qualified.

The Basis of the Price for the Curry Company

According to Interior and Foundation officials, the purchase price of the Curry Company was not based on any appraisal of the value of its stock or its assets (including its possessory interest) and liabilities. Interior officials said that the purchase price was negotiated between the Foundation and MCA on the basis of MCA's asking price and the Park Service's estimates of projected cash flows from concession operations at Yosemite National Park. In addition to the Curry Company's assets within the park, off-site assets included in the sale are a warehouse and a computerized reservation system for accommodations in the park.

The new concessioner will also acquire two contingent liabilities. One contingent liability is the undefined cost of cleaning up an Environmental Protection Agency (EPA) Superfund site in Fresno, California.² The Foundation's purchase agreement substantially limits MCA's financial exposure in the cleanup of this site. The parties agreed that MCA will have no liability beyond the \$200,000 the Curry Company will set aside in an escrow account for 10 years to pay for cleanup efforts. If EPA requires MCA to pay more than \$200,000 for the cleanup, under the purchase agreement, the new concessioner must reimburse MCA for any additional payments.

The second contingent liability is for potential payments to certain Curry Company executives. Under the purchase agreement, the new concessioner will be required to reimburse certain Curry Company executives should the new concessioner terminate their employment before 1995.

According to Interior officials, the benefits to Interior of the transaction are: (1) the Curry Company will relinquish its statutory preferential right to renew the concession contract; (2) the Curry Company will waive its right to compensation for its possessory interest; and (3) Interior will receive the "residual value" of the Curry Company, which Interior officials

²The Comprehensive Environmental Response, Compensation, and Liability Act authorized EPA to compel parties responsible for hazardous waste sites, when identified, to study and clean up the sites or reimburse EPA for the cleanup costs.

define as the amount by which the actual value of the Curry Company, including its possessory interest, exceeds the \$61.5 million purchase price.

None of the parties to the transaction has provided us with information to establish the residual value. Interior officials did inform us that an insurance appraisal was conducted on the existing concessioner buildings in December 1991 after the purchase agreement had been signed. According to this insurance appraisal, the replacement cost of the concessioner buildings was about \$59 million.

Extinguishing the Possessory Interest

According to Interior officials, the Curry Company's possessory interest under the 1963 contract will be extinguished at the end of the new 15-year concession contract. The 1963 concession agreement between the Park Service and the Curry Company provides that the Curry Company has a right to be compensated for the fair value of its possessory interest by a successor concessioner. The fair value of possessory interest is considered to be the "sound value" of each of the concessioner's facilities. Sound value has a long-established meaning and refers to the cost of reconstructing such facilities in their original manner, less depreciation. It does not refer to the lesser cost of replacing such structures with modern equivalents.

Under the September 1991 amendment to the Curry Company's existing concession contract, the possessory interest will serve as security for the new concessioner's obligation to pay MCA \$61.5 million in equal monthly installments over 15 years if the new concessioner chooses not to pay the purchase price in cash. When the note is paid off, the possessory interest will be extinguished. The new concession contract will contain provisions to extinguish the Curry Company's possessory interest under these conditions.

The New Concessioner's Ability to Pay

On the basis of the Park Service's estimates of projected cash flows, it appears that the new concessioner will have sufficient revenues to pay operating expenses, repay the note arising from the purchase price, and contribute to implementing the GMP as well as earn a reasonable profit. (App. I shows the Park Service's estimates of principal and interest payments on the note for the first 5 years of the new concession contract.)

In its projections, the Park Service assumed a 4-percent annual increase in gross receipts and a 40-percent tax rate. The Park Service also assumed

that no franchise fee would be paid to the government but assumed that 8 percent of the concessioner's gross revenue would be applied toward implementing the GMP and that 3.3 percent would be applied toward furniture, fixtures, equipment, and vehicles. On the basis of these assumptions, the new concessioner's net income, after taxes, will increase each year from about \$370,000 in 1994 to about \$7.4 million in 2008.

We have not examined in detail the assumptions used by the Park Service in making these projections. However, several factors could affect these estimates. For example, gross receipts may not increase as projected if park visitation and visitor spending do not increase. Also, the timing of the implementation of the GMP, which may require additional expenditures by the concessioner, may affect the new concessioner's income.

Additionally, the contingent liabilities of the Curry Company that will be assumed by the new concessioner might result in increased costs. As noted earlier, these liabilities include possible reimbursement for cleanup of the Superfund site in Fresno, California, beyond the \$200,000 agreed to by MCA and payments to certain Curry Company employees if their employment is terminated before 1995.

Finally, several bills now before the Congress would revise the Concessions Policy Act of 1965. One of these bills would significantly increase current concessioner franchise fees, which could also reduce the new concessioner's net income.

Implementation of the Yosemite General Management Plan

Concerned about overcrowding and commercialization at Yosemite National Park, the Park Service in 1980 issued the GMP. At the heart of the GMP was a vision to make Yosemite Valley a less congested and developed area while emphasizing its natural beauty. The GMP prescribed over 300 specific actions to be implemented by 1990. A Concession Services Plan, which is intended to reorganize commercial visitor service in the park along the lines described in the 1980 GMP, has been finalized. Additionally, a Housing Plan/Environmental Impact Statement/Supplement to the 1980 GMP will be released in the summer of 1992 for public comment and will provide alternatives for relocating new employee housing and an administrative building that will affect the new concessioner's operations. What the Park Service will require of the new concessioner as a result of these studies and what the associated costs will be have not been finalized.

In August 1992, the Park Service finalized its Concession Services Plan for Yosemite National Park. This plan, which deals only with concession operations, recognizes that the 1980 GMP is not binding and can be modified. The plan contains the Park Service's preferred alternative to the 1980 GMP. Implementation of the preferred alternative would result in (1) a slightly greater reduction in the number of rooms for visitor lodging in the park and a change in the mix of types of rooms, (2) an increase in food service seating through redesigned existing indoor space and increased outdoor seating, and (3) a reallocation of the square footage devoted to gift and clothing store operations in Yosemite Valley.

According to the Concession Services Plan, funding for the concessioner's portion of costs resulting from the GMP will come from the concessioner's revenues. Estimates in the plan indicate that the new concessioner's cost to implement the plan will be about \$30 million.

Foundation's Participation in the Transaction

The Foundation is not authorized to participate in this transaction. The Foundation is authorized only to accept and administer gifts to benefit the Park Service. This transaction does not result in a gift to the Foundation but is instead a complex business transaction among MCA, the Foundation, and Interior.

To encourage private gifts, the Congress established the Foundation to accept and administer private "gifts of real and personal property or any income therefrom or other interest therein for the benefit of the National Park Service, or its activities or services." (16 U.S.C. 19e.) The Secretary of the Interior, as chairman of the Foundation's board, exercises primary management responsibility over the Foundation.³

The Foundation is specifically authorized to "accept, receive, solicit, hold and use" any gift, bequest, or devise "even though it is encumbered or restricted," as long as any current or future interest benefits the Park Service, its activities, or its services. (16 U.S.C. 19g.) The legislative history of the Foundation's statutory charter indicates that the Congress designed the Foundation primarily to attract significant donations of private capital and property that had not materialized under the National Park Trust

³By statute, the Secretary serves as chairman of the Foundation's board of directors and appoints the private citizen board members. (16 U.S.C. 19f.) These members, in addition to the Director of the Park Service, make up the membership of the board. Under the Foundation's by-laws, the Secretary, as chairman, exercises general supervision over the affairs of the Foundation; has the powers of a chief executive; presides over all board meetings; signs all contracts, reports, etc. (art. VI); and appoints all board committees (art. V).

Fund, which the Foundation superseded. The Congress sought to increase donations principally by authorizing the Foundation to receive gifts of real property, an authority that the Fund had lacked. By contrast, a similar congressionally chartered foundation, the National Fish and Wildlife Foundation, is authorized not only to accept gifts but also to participate in a wide variety of domestic and international activities concerning fish and wildlife conservation. (16 U.S.C. 3701(b).)

MCA's sale of the Curry Company's stock is neither a gift nor tantamount to one. Rather, it represents a complex business transaction among MCA, the Foundation, and Interior. Several elements of the transaction and the facts surrounding it support our view:

- MCA is receiving consideration for the Curry Company's stock and the Company's relinquishment of two valuable rights: the statutory right to renew the present concession contract and the contract right to be compensated for the possessory interest in park facilities.
- There is no evidence that MCA, the transferor in this case, intended to make a gratuitous transfer: MCA negotiated the \$61.5 million sum based on its own asking price, believed that it had negotiated a fair deal for the Curry Company, and explicitly denied any intention of making a gift out of the property.
- MCA and Interior agreed to this transaction only after they had considered and rejected at least two other proposals, or, in short, only after the parties had bargained.
- The Foundation describes its role in the transaction not as soliciting a gift from a charitable donor but rather as playing an honest broker or middleman between the principal parties.

Thus, the Foundation lacked the authority to participate in this transaction. However, Interior does have the authority, under the Concessions Policy Act of 1965, to enter into agreements like this one directly with MCA. Therefore, it appears that the Foundation's involvement was not needed to complete the transaction. The following facts suggest that the Foundation, in its dealings with MCA, merely acted on Interior's behalf: the Secretary of the Interior is the chairman and chief executive of the Foundation, and the Foundation negotiated the terms of the MCA contract with Interior's full knowledge, participation, and agreement. Furthermore, the Foundation lacks the resources to acquire the Curry Company's stock and under the agreement is not legally obligated to pay MCA for the stock. Rather, Interior has agreed with MCA, in the concession contract amendment, to require the new concessioner to pay for the stock;

Interior's signing of the concession contract amendment was essential to MCA's participation in the transaction.

Foundation officials disagreed with our position. However, as discussed in this section, we consider that MCA's sale of the Curry Company's stock is not a gift or tantamount to one; consequently, the Foundation did not have the authority to participate in the transaction.

Observations

In summary, the purchase price of \$61.5 million was negotiated between the parties to the transaction and agreed to by all the parties. The purchase price was not based on an appraisal of the value of the Curry Company's assets, but was based on MCA's asking price and Park Service estimates of projected cash flows from concession operations at the park. At the end of the new 15-year concession contract, the Curry Company's possessory interest will be extinguished. This will be accomplished through provisions in the new concession contract.

On the basis of projected cash flow data provided to us by the Park Service, it appears that the new concessioner will have sufficient revenue to pay the note, cover operating expenses, and make a reasonable profit. However, we have not reviewed the assumptions the Park Service used in calculating the cash flow projections. The new concessioner will be required to implement some portion of the GMP; however, the Park Service has not yet finalized what those requirements or the associated cost will be.

Finally, the transfer of interests in the agreement between MCA and the Foundation does not constitute a gift to the Foundation. Accordingly, the Foundation's involvement in the agreement is unauthorized. Additionally, the Foundation's involvement appears to have been unnecessary to completing the transaction, since Interior is authorized to enter into such transactions directly. The Foundation appears to have been acting on Interior's behalf.

Scope and Methodology

We performed our work at the headquarters offices of the Park Service and the Department of the Interior's Office of the Solicitor. We reviewed documents relevant to the transaction and interviewed officials who were knowledgeable about the negotiations that led to the agreement. We also reviewed information provided at our request by the Secretary of the

Interior about the agreement and information from the counsel for the Foundation.

We examined the Concessions Policy Act of 1965 and the Foundation's statutory authority. In conducting these examinations, we reviewed the legislative histories of these laws and other relevant congressional materials. We also examined pending legislation that would, if passed, amend the Concessions Policy Act.

As agreed with the requester, we are providing information only on the mechanics of this transaction. We did not assess whether the purchase price represented a fair return to the government. Similarly, we have described how the Curry Company's possessory interest will be extinguished. Also, we did not review the assumptions the Park Service used for its cash flow projections. Because the Park Service has not finalized what GMP requirements will be placed on the new concessioner, we do not know how the transaction affects implementation of the GMP. Finally, we reviewed the Foundation's authority to participate in this transaction.

We have reported on many of these issues in the past. For example, in the past year we reported and testified on fair market value.⁴ Earlier, we reported on the need to reduce possessory interest.⁵ Finally, to fund major improvements under the GMP, the Park Service has stated that a Capital Improvement Fund will be used. We recently testified that the Park Service had no guidance on how these funds are established, administered, or tracked.⁶

Our review was conducted from April 1991 to July 1992 in accordance with generally accepted government auditing standards. As agreed with your office, we did not obtain written agency comments on a draft of this report. We did, however, discuss the facts with officials from the Department of the Interior's Office of the Solicitor and the Park Service as well as officials from the Foundation. Interior officials said that they could not comment on the facts presented orally without seeing the context in which they were written. Foundation officials disagreed that they did not

⁴See Recreation Concessioners Operating on Federal Lands (GAO/T-RCED-91-16, Mar. 21, 1991) and Federal Lands: Improvements Needed in Managing Concessioners (GAO/RCED-91-163, Jun. 11, 1991).

⁵See Concession Operations in the National Parks—Improvements Needed in Administration (RED-76-1, Jul. 21, 1976).

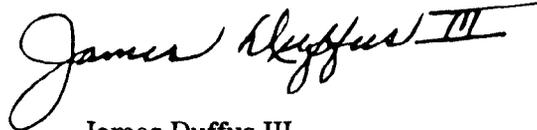
⁶See National Park Service: Policies and Practices for Determining Concessioners' Building Use Fees (GAO/T-RCED-92-66, May 21, 1992).

have the authority to enter into the transaction. However, for reasons previously stated we consider that the Foundation did not have such authority.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Secretary of the Interior and the Director of the Park Service. We will make copies available to others on request.

Please contact me on (202) 275-7756 if you or your staff have any questions. Major contributors to this report are listed in appendix II.

Sincerely yours,



James Duffus III
Director, Natural Resources
Management Issues

Principal and Interest Payments October 31, 1993, to September 30, 1998

Payment Period	Principal	Interest	Total
10/31/93 to 9/30/94	\$4,104,984	\$5,073,931	\$9,178,915
10/31/94 to 9/30/95	4,104,984	4,723,007	8,827,991
10/31/95 to 9/30/96	4,104,984	4,376,083	8,481,067
10/31/96 to 9/30/97	4,104,984	4,027,160	8,132,144
10/31/97 to 9/30/98	4,104,984	3,678,236	7,783,220

Source: Park Service's Western Regional Office.

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