For RELEASE Tuesday, June 6, 1972

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

Securities Exchange Act of 1934
Release No. 9629

The Securities and Exchange Commission announced that on May 30, 1972 it entered an order accepting an offer of settlement submitted by Great Southwest Corporation (GSC) of Los Angeles, California in connection with an administrative proceeding (File No. 3-3412) pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934. The proceeding which was ordered by the Commission on December 8, 1971 relates to allegations by the Commission's Division of Corporation Finance (Division) that GSC had filed annual reports on Form 10-K for 1968 and 1969 with the Commission which contained materially misleading statements or omitted to state material facts. The Division's allegations related to the financial reporting of three real estate transactions involving the disposition by GSC of interests in certain undeveloped real estate (the Bryant Ranch) and two amusement parks located in Georgia and Texas.

GSC without admitting or denying the allegations in the Statement of Matters of the Division agreed to comply with an order of the Commission directing it to amend as soon as practicable its annual reports on Form 10-K for 1968 and 1969 in accordance with the terms of the settlement and to amend its annual report on Form 10-K for 1970 which was filed subsequent to the commencement of the proceeding and not subject to the allegations of the Division so that the real estate transactions in question would be accounted for and reported on a basis consistent with the terms of the Commission's order for all years subsequent to 1969. GSC agreed to restate its consolidated financial statements contained in its annual reports on Form 10-K for 1968 and 1969 substantially as follows:

Profits recognized on the sales of the Bryant Ranch, the Georgia Amusement Park, and the Texas Amusement Park shall he excluded from the consolidated statement of operations of GSC for the years ended December 31, 1968 and December 31, 1969, together with an appropriate elimination of the sales and cost of sales related to the transactions. An accounting method for presenting these transactions in the consolidated financial statements of GSC and for timing the recognition of income relating to such transactions shall be adopted in substitution of the previous method substantially as follows:

(1) Because of the continuing involvement of GSC in the operations of the properties, each of the transactions shall be reported as a co-venturing arrangement under which (A) the publicly-held limited partnership, as the limited partner of the venture, makes an initial cash investment and, in the case of the Bryant Ranch, provides specified annual

amounts of cash to offset the carrying costs of the property, (B) GSC, as the general partner, contributes the underlying property, provides operating management, and, in the case of the Bryant Ranch, assumes certain development obligations, and (C) GSC and the publicly-held limited partnership participate in profits in accordance with their contractual arrangements.

(2) The investment of GSC in the managed partnerships shall initially be reflected in GSC's consolidated accounts at an amount equal to the net book value of the assets transferred by GSC; costs incurred incident to the three transactions, representing sales commissions and other related costs, shall be added to GSC's investment accounts; in the case of the Bryant Ranch the costs of constructing recreational facilities and finishing the 400 unimproved lots shall also be accrued as additions to the investment account; and initial cash payments made to GSC by the publicly-held limited partnerships will be deducted from the investment accounts.

(3) Operations of the managed partnerships shall be combined with operations of GSC; the publicly-held limited partnerships' shares of earnings shall be reflected as a deduction in GSC's statement of operations.

(4) In the case of the two Amusement Parks, GSC's investments in the managed partnerships shall be amortized as a charge to income over the life of the underlying assets (not to exceed the period of the agreement establishing the venture).

(5) In the case of the Bryant Ranch, any future expenditures made by GSC shall be added to the investment account and any future proceeds received by GSC (e.g., sales of lots) shall be deducted from the investment account; no profit will be recognized until GSC's investment has been recovered.

The transactions and the method of accounting for such transactions on a restated basis shall be explained in a footnote. Other appropriate disclosures with respect to the composition of the investment accounts will be provided.

GSC also entered into a stipulation of facts with the Commission and agreed to send a copy of any findings, opinion and order which may be issued by the Commission to its shareholders prior to its next annual meeting.

The Commission after considering all of the relevant circumstances, including the recommendation of the Division that the offer of settlement be accepted, has accepted the offer and issued an order directing GSC to amend its annual reports accordingly. The Commission determined to issue its findings and opinion in this matter at a later date.

(Securities Exchange Act Release No. 9934)
ADMINISTRATIVE PROCEEDING
FILE NO. 3-3412

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.
January 15, 1973

In the Matter of

Reports of GREAT SOUTHWEST CORPORATION
File No. 0-100

Securities Exchange Act of 1934 - Section 15(c)(4)

FINDINGS AND OPINION OF THE COMMISSION

FORM 10-K REPORTS

Improper Treatment of Transactions as Sales

Where financial statements in Form 10-K annual reports filed by corporation pursuant to Section 13(a) of Securities Exchange Act of 1934 and applicable rule thereunder treated certain real estate transactions as sales and recorded profits in connection therewith, but it appeared that, though transactions may have met formal legal requirements of sale, corporation retained control over management of properties and retained substantially all risk of loss and opportunity for gain, held, financial statements materially misleading in treating transactions as sales for accounting purposes, and, pursuant to Section 15(c)(4) of Securities Exchange Act, corporation required to amend financial statements so as to exclude profits on transactions and eliminate sales and cost of sales related thereto.

APPEARANCES:

Richard H. Rowe, William Gleeson and David H. Belkin, for the Division of Corporation Finance of the Commission.

William A.. Norris and Julian Burke, of Tuttle & Taylor, for Great Southwest Corporation.

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On May 30, 1972, we issued an order, in proceedings pursuant to Section 15(c) (4) of the Securities Exchange Act of 1934 ("Exchange Act"), accepting an offer of settlement submitted by Great Southwest Corporation ("registrant"). In that order, to which registrant consented without admitting or denying the allegations in the Statement of Matters of our Division of Corporation Finance, we directed registrant to file amendments to its Form 10-K annual reports for the fiscal years ended December 31, 1968 and December 31, 1969, filed pursuant to Section 13(a) of the Exchange Act and Rule 13a-1 thereunder. 1/ Those amendments were designed to restate the consolidated Financial statements in the Form 10-Ks so as to exclude the profits recorded on certain sales and eliminate the sales and cost of sales related to those transactions. In accordance with our order, we now issue our Findings and Opinion with respect to the issues in the case.

Registrant was in 1968 and 1969 and continues to be engaged in a variety of real estate operations. It is a majority owned (approximately 9l%) subsidiary of the Pennsylvania Company, a subsidiary of Penn Central Transportation Company, 2/ which is in turn a subsidiary of the Penn Central Company. 3/ For financial reporting purposes, all three "upstream" companies reflect registrant's results of operations with their own in some manner.

Issues Involved

At issue in these proceedings was registrant's accounting treatment and financial reporting of three real estate transactions in its 1968 and 1969 Form 10-K reports. 4/ In two, registrant sold operating amusement parks. In the third, registrant sold a parcel of raw land suitable for holding for subsequent sale or development and sale. Registrant treated all three transactions as reportable sales and accorded revenue recognition to the consideration received from the purchasers. The Statement of Matters alleged that registrant failed to comply with Section 13 of the Exchange Act and the rules thereunder in that the financial statements in the Form 10-K reports in question were materially misleading in treating the transactions as sales and recognizing revenue or profits in connection therewith.

The accounting principles involved are not new or unique. Ten years ago we issued Accounting Series Release No. 95 (December 28, 1962) ("ASR 95") to provide guidance in the application of generally accepted accounting principles to real estate transactions reported in financial statements to be included in documents filed under the Federal securities laws. In that release we stated, "The recognition of profit at the time of sale, in accordance with generally accepted accounting principles, is appropriate if it is reasonable to conclude, in the light of all the circumstances, that a profit has been realized." We indicated that mere normal compliance with the technical legal requirements of a sale is not necessarily sufficient to justify revenue recognition, and that the substance of a transaction is the controlling consideration. In our opinion, the real estate transactions in question in this proceeding involved circumstances of the type discussed in ASR 95 and were governed by the principles set forth therein dictating that there be no recognition of profit.

Amusement Park Transactions

In 1968, registrant sold its amusement park known as Six Flags Over Georgia ("Georgia park") to Six Flags Fund, Ltd. for $22,980,157 and recorded a profit of $4,813,400 on the transaction. In 1969, it sold its other amusement park known as Six Flags Over Texas ("Texas park") to Six Flags Over Texas Fund, Ltd. for $40,000,000, and recorded a profit of $17,530,170 on the transaction.

Georgia Park

The purchaser of Georgia park was a publicly held limited partnership formed for the purpose of acquiring the park. At about the time of its formation, the purchaser made a public offering of securities, registered with this Commission under the Securities Act of 1933, to raise funds sufficient for a down payment on the park, a prepayment of interest, and other expenses. Other than the funds raised through the offering, the purchaser had no significant assets. The purchaser made a cash down payment of $1,500,000, assumed liabilities against the park of $480,157, and gave a mortgage note for $21,000,000 bearing interest of 7%. It also prepaid interest in the amount of $1,470,000. Under the terms of the note, the purchaser was required to make only interest payments during the five-year period 1969 through 1974. The interest payments during that period under the terms of the note were $1,249,500 per year. During the period from 1975 through 2004, it was required to make principal payments of $700,000 per year and interest payments of $759,500 per year.

Under the terms of the purchaser's limited partnership agreement, the limited partners were not obligated to make contributions to the purchaser's capital in addition to those funds contributed at the time of formation. The general partner was not required to contribute any capital. Distributions were to be made and taxable income and loss allocated by the purchaser on a basis of 99% to the limited partners and 1% to the general partner.

At about the time of the sale of Georgia park to the purchaser, registrant entered into an agreement with the purchaser's general partner by which registrant agreed to indemnify the general partner in case of certain specified losses, claims, liabilities, damages, and expenses attributable to the general partner.

Contemporaneously with its purchase of Georgia park, the purchaser contributed the park to Six Flags Over Georgia, Ltd. ('Operator'), a limited partnership formed for the purpose of holding and operating the park. The purchaser became the sole limited partner of Operator. Other than its contribution of the park, the purchaser was not obligated to contribute any capital to Operator. Registrant was the sole general partner of Operator but did not contribute any capital to it. Registrant was given exclusive control of the management of the business and affairs of Georgia park and the purchaser was excluded from participating in its management. Moreover, registrant could not be removed as general partner of Operator prior to 1997 except through dissolution of Operator by court decree, in which event the purchaser was required to sell Georgia park. Registrant agreed to cause each obligation of registrant as general partner to be performed and to pay damages of $3,030,000 if there were a material breach which continued for over 90 days.

Operator's limited partnership agreement further provided that the first $2,100,000 of net cash flow generated by the operation of the park (essentially, gross proceeds from the operations of the park and otherwise, less operating costs and 10% of the park's proceeds) was to be distributed to the purchaser. Out of such distributions, the purchaser was required to make the payments required by the mortgage note. In addition, the purchaser entered into an agreement to pay to registrant 90% of all distributions received by it in excess of $100,000 until one-half of the original principal amount of the note was paid.

After the $2,100,000 distribution to the purchaser, the next $2,100,000 was to be distributed to registrant. After that, registrant was to receive a management fee equal to 3% of the gross proceeds of the park. Finally, all remaining cash flow was to be divided and distributed on a basis of 70% to registrant and 30% to the purchaser.

Under Operator's limited partnership agreement, for tax purposes all depreciation allowable on Georgia park was to be allocated to the purchaser. Income (computed without regard to depreciation) was to be allocated in proportion to distributions of net cash flow to the purchaser and registrant. The purchaser was to be allocated losses up to the amount of payments already made by the purchaser less all losses already allocated to the purchaser. All other tax losses were allocated to registrant.

According to a pro forma table of taxable income for the eleven-month period ended November 30,1968, registrant, as the result of the transaction, would have had net taxable income of $1,232,003 in 1968. The purchaser, after deduction of depreciation on Georgia park and interest expense (the prepaid interest of $1,470,000), would have had a tax loss of $1,911,003, of which $1,892,000 or 99% would be passed through to the limited partners.

Texas Park

The structure of the Texas park transaction was substantially similar to that of the Georgia park transaction. Hence, it is necessary only to point out the few differences between the two transactions.

At the time of the Texas park transaction the purchaser made a down payment of $1,500,000 in cash, assumed indebtedness of $198,415, and gave a mortgage note for $38,301,585, bearing interest at 6.5% per year. It also prepaid interest in the amount of $3,932,673. During the period from 1971 through 2005, the purchaser was required to pay interest in the amount of $1,094,331 per year and principal in the amount of $1,221,354 per year, constituting aggregate annual payments of $2,315,685.

The operator of Texas park was Texas Flags, Ltd., the sole general partner of which was registrant.

In the Texas park transaction, the purchaser was to receive the [unreadable] additional payments agreement except that it applied only until one-third of the original principal amount was paid. After the distribution to the purchaser, the next $3,900,000 of net cash flow went to registrant. Otherwise, the distribution schedule was identical in structure to the schedule in the Georgia park transaction.

The provisions for allocation of depreciation and taxable income were substantially the same as those in the Georgia park transaction. The purchaser was to be allocated losses up to the amount of payments already made by the purchaser less all losses already allocated to the purchaser.

The pro forma table of taxable income for the twelve-month periods ending December 31, 1967 and December 31, 1968 indicated that the purchaser would have had net tax losses of $873,030 in 1967 and $1,525,000 in 1968. Registrant would have had no income or losses for tax purposes in either year as a result of the transaction.

Application of ASR 95 to Amusement Park Transactions

In ASR 95, we stated that a prerequisite to revenue recognition is an effective exchange or conversion. In most sale transactions, of course, it is clear that an exchange of economic interests is effected. In certain transactions, however, even though the formal legal requirements of a sale are met, the terms of the transaction or the surrounding circumstances are such that there has not been a sufficient exchange or conversion, in economic terms, with respect to the seller's interest in the property to justify treating the transaction for financial reporting purposes as a sale on which profit may be recognized. 5/

One of the aspects of an exchange which was missing from the amusement park transactions but necessary for an effective economic conversion was the transfer of control. In its role as the sole general partner of the operators, which it assumed immediately upon the transfer of the amusement parks, registrant continued to have, in a functional sense, essentially the same type and degree of control over the business and management of the amusement parks as it had before. Moreover, because the terms of the operators' limited partnership agreements did not provide a practical means for the purchasers to effect removal of registrant as general partner prior to 1997, registrant's control was secure.

The other critical aspect of an exchange which was missing from the transactions was the transfer to the purchasers of the risk of loss opportunity for gain. Registrant continued to bear substantially all of the risk of loss. Neither the purchasers nor their general or limited partners were personally liable under the mortgage notes given to registrant, all further payments on the mortgage notes were to be made from the net cash flow distributions generated by the parks. If the operation of the parks did not produce sufficient funds to pay off the mortgage notes, registrant's only remedy would be to sell or recover the unsuccessful parks. It could not look to the limited partners of the purchasers. Moreover, registrant retained substantially all of the opportunity for gain. The accelerated payment provisions assured that, at least in the early years after the transactions, registrant would receive almost the entire cash flow distributions made to the purchasers. More importantly, the distribution schedules were designed to assure that registrant would receive, in all probability, the entire increase, if any, in the net cash flow generated by the amusement parks. According to pro forma statements of net cash flow and distribution thereof in the registration statement filed by the purchaser of Texas park, the purchaser would have received $3,903,000 in 1967 and in 1968, and registrant nothing. If in the future Texas park generated more than $3,933,000 of net cash flow, registrant would receive the next $3,900,000 and then a management fee of 3% of gross proceeds (pro forma computations of 1967 and 1968 gross proceeds, including loans from registrant, would have been $11,824,030 and $14,650,000, respectively). Thus, even if the net cash flow were more than double what it was in 1967 and 1968, registrant would receive all of the increase. The situation in the Georgia park transaction was similar. The pro forma computation for the eleven-month period ended November 33, 1968, which was included in the registration statement filed by the purchaser, indicated that in 1968 the purchaser would receive $2,100,030 and registrant $1,010,000. Thus, if Georgia park generated any additional cash flow in the future, registrant would receive the next $1,090,000 of net cash flow, then a management fee of 3% of gross proceeds (the pro forma statements indicated that in 1968 the gross proceeds, including loans of $3,683,000 from registrant, would have been $13,124,000), and 70% of all cash flow thereafter, if any. For all practical purposes, it appears that registrant would be the beneficiary of any growth in the profitability of the amusement parks, and the purchasers' profit would probably be limited to the amounts of the initial distributions to them (either $2,103,000 or $3,900,000) less payments to registrant on the mortgage notes and other expenses.

When the elements of control and of retention of risk and opportunity for gain are considered together, it becomes apparent that registrant's position with respect to the amusement parks did not substantively change because of the sale transfers. The timing and amount of its ultimate gain were largely dependent upon its own efforts in managing and operating the amusement parks and were neither determined by, nor limited to, the sales prices. Thus, in economic terms, true exchanges did not take place, and it was therefore not proper for financial reporting purposes to accord sale treatment and revenue recognition to the transactions, and. the financial reports were materially misleading in doing so.

Raw Land Transaction

In 1968 registrant sold a parcel of undeveloped real estate called the Bryant Ranch for $31,000,000. Registrant recorded the transaction as a sale with a profit of $8,588,176 in 1968 and, as explained below, deferred a profit of $327,833 until 1969. The purchaser was Saddleback Investment Company, a limited partnership formed to purchase the land. 6/ The purchaser made a cash down payment of $600,000 (approximately 2% of the purchase price) and a prepayment of interest of $5,400,000 (equivalent to approximately 17% of the purchase price). The purchaser also gave registrant a note for $30,400,000, bearing interest at 7% per year. Under the terms of the note, the purchaser was to make no principal payments during the first 15 years after the transaction (1969 through 1983). During that time, it would take interest payments of $1,000,003 per year (less than the simple interest of $2,128,000 per year earned under the terms of the note). During the five succeeding years beginning in 1984, the purchaser was to pay all the principal of the note in five installments averaging $6,080,033 per year and the accrued but unpaid interest as well as the current interest in equal installments of $3,638,277 per year. Neither the purchaser, its general partner, nor limited partners were liable on the note, the sole recourse of registrant, or any subsequent note holder, being against the Bryant Ranch. The property was mortgaged to registrant, with parcels to be released upon payment of a pro rata amount.

The purchaser contributed the Bryant Ranch to a limited partnership, Oaks Investment Company ("holding partnership"), which was formed to hold the property for sale or development. Registrant became the general partner and the purchaser the limited partner of the holding partnership. Registrant was given complete control of the management of the holding partnership and could not be removed as general partner except through dissolution of the partnership by court decree. The purchaser's contributions to capital were its interest in the Bryant Ranch, all future payments of principal and interest on the note, and all real estate taxes and assessments on the Bryant Ranch (estimated to range from $190,000 to $310,000 per year from 1969 through 1988). Registrant's capital contribution was to be sufficient funds to develop all recreational facilities to be constructed on the Bryant Ranch, 400 finished lots to be distributed to the limited partners of the purchaser, and an access highway and water system sufficient for 15,000 dwelling units.

The holding partnership was to hold the Bryant Ranch for sale or for development and sale. It was expected that the Bryant Ranch would be ready for development during the period from 8 to 15 years after the transaction. Under the terms of the agreement, no part of the Bryant Ranch could be sold during the first three years after the transaction. Thereafter, until deve1opment, registrant had a right of first refusal on the property on the same terms as any offeror. The Bryant Ranch was to be held by a trustee, which wou1d release the property on a pro rate basis upon any payment by the purchaser. If the Bryant Ranch were not sold within 8 years, registrant was to draw up development plans for the purchaser's approval. If the purchaser approved the plans, registrant was to use its best efforts to develop the Bryant Ranch. If the purchaser rejected the plans, and a redraft by the registrant was also unacceptable, registrant could offer to sell its interest in the holding partnership to the purchaser for $2,000,000 or to purchase the purchaser's interest in the holding partnership for the amount of its capital contribution plus 10% interest. If the purchaser rejected the offer, the holding partnership would continue, except that registrant would be relieved of its obligation to build an access highway and a water system.

The holding partnership took the property subject to the note given by the purchaser to registrant. Accordingly, any proceeds from the sale of the Bryant Ranch were first to be used to pay off the note and any accrued interest. Thereafter, the purchaser was to receive a refund of its capital contribution plus 10% per annum simple interest. By way of example, it can be pointed out that at the end of three years (the first time at which the Bryant Ranch could be sold), the total capital contributions by the purchaser were scheduled to be $9,365,000. The interest on such contributions would be $2,130,000. Similarly, at the end of eight years (when development plans would have to be submitted), the amounts would be $15,212,000 and $7,976,100. At that time, registrant and the purchaser were to divide all net proceeds equally.

Until the sale or development and sale of the Bryant Ranch, it was to be leased to a recreational club owned and operated by registrant. The limited partners of registrant were to be permitted to join and maintain membership in the club for a fee less than that to be charged others.

Application of ASR 95 to Raw Land Transaction

Applying the tests of ASR 95 to the Bryant Ranch transaction, there was not a sufficient conversion of either registrant's or the purchaser's interest in the property to justify sale treatment of the transaction.

Despite the formal aspects of the transaction, immediately after the sale registrant had essentially the same type and degree of control as it had prior to the transaction. As general partner of the holding partnership, registrant had complete control over the business and affairs of the Bryant Ranch, including drawing up and carrying out any development plans. Because registrant could not be removed as general partner except by decree of court, its control was secure. Moreover, registrant's right of first refusal, the restrictions on the limited partners' rights to authorize sale of the property (such as no sales for the first three years), and registrant's powers as general partner in selling and developing the property indicate that registrant had substantial control over any subsequent sale of the Bryant Ranch.

In addition, registrant continued after the sale of the Bryant Ranch to have access in large part to many of the opportunities for gain and to be exposed to many of the risks of loss it had before the transaction. The opportunities resulted from its retention of a 50% equity interest in the property. Under the holding partnership agreement, registrant and the purchaser were to share equally in any proceeds of the Bryant Ranch after the note to registrant was paid and the purchaser recovered its capital contribution plus interest. The risks resulted from the fact that there was no assurance that the note would be paid because only a minimal down payment was made, all other principal payments were deferred for fifteen years, and there was no personal liability on the note.

When registrant's control and retention of risks and opportunities are considered together, it becomes apparent that the timing and amount of registrant's ultimate gain was to a large extent dependent upon its own efforts in selling or developing and selling the property. Moreover, the timing and amount of that gain was neither determined by, nor limited to, the sale price.

Similarly, it is obvious that the sale of the Bryant Ranch did not result in an effective exchange of the purchaser's interest because of the purchaser's failure to assume the risks of ownership and because of the limitations on its possible profit. Ordinarily, it may be presumed that a purchaser has assumed the risks of ownership if he makes a substantial initial commitment of funds and then amortizes the remaining obligation on the basis of at least level payments over a term of years no longer than usual for such transactions. In the Bryant Ranch transaction the purchaser did neither. The initial payment did not constitute a substantial commitment for several reasons. The bulk (90%) of it was denominated interest and was deductible for tax purposes by the limited partners of the purchaser, thus reducing their actual dollar cost. In addition, the large interest payment was not of the type which could be characterized as additional sales proceeds, thereby representing a financial investment by the purchaser. Finally, the interest portion of the initial payment was not maintained annually in an advance position and, accordingly, could not be viewed as a substitute for principal payments.

Moreover, the annual payments by the purchaser were not sufficiently large to indicate a genuine assumption of risk. As we have seen, during the first fifteen years of the holding partnership, the purchaser was scheduled to make no payments of principal other than the down payment, and its required payments of interest were substantially lower than the simple interest accrued on the note. The principal payments and the accrued but unpaid (as well as the current) interest payments were telescoped into a five-year period beginning in the sixteenth year after the transaction. Significantly, there was no personal liability on the purchaser's note, and it was expected that the Bryant Ranch would be ready for development by at least the eighth and no later than the fifteenth year. It appears from the manner in which the transaction was structured that the purchaser would never be required to make a substantial commitment of its own funds, but would meet its obligations to registrant from the proceeds of the ultimate disposition of the Bryant Ranch. A fair characterization of the purchaser's payments to registrant and of real estate taxes during the first fifteen years would be "carrying costs." In view of the minimal amount of such payments, it appears that the purchaser was merely supplying registrant with funds to defray registrant's costs in carrying the land until it could be sold or developed and sold.

In addition, the purchaser's possible profit from the ultimate disposition of the Bryant Ranch was subject to limitations. This, of course, results from registrant's retention of an equity position in the property, and indicates that there was not a sufficient conversion of interests. Thus, if proceeds from the disposition of the Bryant Ranch remain after the note given to registrant is paid and the purchaser is repaid with interest, the purchaser must share the proceeds on an equal basis with registrant. But it is also important to note that, prior to such a division of proceeds, the purchaser is to recover its capital contribution (its payments to registrant and of taxes) plus 10% simple non-compounded interest. The nature and priority of this return suggests that the purchaser's actual function in the transaction was that of a lender or mortgagee, as is further evidenced by the fact that the purchaser was merely advancing to registrant the carrying costs on the property.

Under the circumstances, we conclude that the Bryant Ranch transaction did not involve an effective exchange and that it was materially misleading to treat it as a sale and recognize revenue in connection therewith. 7/

Restatement of Financial Statements

Recognizing that any restatement of the financial statements contained in registrant's 1968 and 1969 Form 10-K reports would involve a certain awkwardness because of the inherent tension between form and substance in the three real estate transactions, we ordered restatement on the basis offered by registrant, i.e., that the land was not sold but was contributed to a joint venture, which we considered would adequately reflect the true economic nature of the transactions. We ordered (1) that registrant's investment in the managed partnerships initially be reflected in registrant's consolidated accounts at an amount equal to the net book value of the assets transferred by registrant; that costs incurred incident to the three transactions, representing sales commissions and other related costs, be added to registrant's investment accounts; that, in the case of the Bryant Ranch, the costs of constructing recreational facilities and finishing the 400 unimproved lots also be accrued as additions to the investment account; and that initial cash payments made to registrant by the purchasers be deducted from the investment accounts; (2) that operations of the managed partnerships be combined with operations of registrant, and that the purchasers' shares of earnings be reflected as a deduction in registrant's statement of operations; (3) that, in the case of the two amusement parks, registrant's investments in the managed partnerships be amortized as a charge to income over the life of the underlying assets (not to exceed the period of the agreement establishing the venture); and (4) that, in the case of the Bryant Ranch, any future expenditures made by registrant (e.g., cost of formulating or implementing a development plan) be added to the investment account and any future proceeds received by registrant (e.g., sales of lots) be deducted from the investment account, and no profit be recognized until registrant's entire investment has been recovered.

We wish to make it clear that the above method of restatement was not the only or necessary way to account for the transactions. Other methods, so long as they reflected the true economic nature of the transactions, would have been equally acceptable. The essential point, as we emphasized in ASR 95 and here, is that the method of accounting should reflect the economic realities of the transactions. 8/

By the Commission (Chairman CASEY arid Commissioners OWENS, HERLONG and LOOMIS)

Ronald F. Hunt
Secretary

1/ Under Section 15(c) (4) of the Exchange Act, we may, if we find material non-compliance with Section 13 of that Act or any rule thereunder, require compliance upon such terms and conditions as we may specify. Under Section 13 and Rule 13a-1 registrant is required to file an annual report for each fiscal year. The requirement that annual reports be filed necessarily embodies the requirement that such reports be true and correct. Great Sweet Grass Oils Limited, 37 S.E.C. 683, 684, n. 1 (1957).

2/ On June 21, 1970, Penn Central Transportation Company filed a petition for reorganization, pursuant to Section 77 of the Bankruptcy Act, in the U.S. District Court for the Eastern District of Pennsylvania.

3/ Penn Central Company was created as a holding company for the stock of Penn Central Transportation Company on October 1, 1969.

4/ We, as did registrant, will treat it as the party to the various transactions, although one or more of registrant's wholly owned subsidiaries rather than registrant itself, may have been involved in a particular transaction.

5/ Cf. Brian-Lloyd Co., Inc., Securities Act Release No. 5269 (July 7, 1972); Major Realty Corporation, Securities Exchange Act Release No. 9137 (April 8, 1971).

6/ At the time of the transaction, registrant owned 15% of the limited partnership interests in the purchaser. As a result, part of the profit on the transaction was not recognized in 1968. The amount deferred was recognized in 1969 when registrant sold its interests in the purchaser.

7/ We note that one of the illustrative cases described in ASR 95 involved a situation which is essentially identical in substance to the Bryant Ranch transaction and in which we deemed it inappropriate to recognize gross profit as having been realized at the time of the sale. The text of that illustrative case is as follows:

On the last day of its fiscal year a registrant engaged principally in the development of real estate sold a block of 1,000 lots to a nonaffiliated construction company for $1 million, receiving a cash payment of $100,000 and a non-recourse note of $1 million, due in 1 year, secured only by the lots transferred. Interest was limited to 6 percent for 1 year or $120 per house. A profit of $500,000 before taxes was recorded on the transaction. The transaction was subject to, among others, the following conditions and arrangements:

a. Each lot was to be released upon payment of $1,000 plus interest at the time of closing the sale of a house and lot.

b. The registrant was to make the determination of when the houses were to be constructed and to arrange the construction loans.

c. The registrant was to be exclusive sales agent for the construction company, arrange financing and conduct closings with the home buyers.

d. The construction company was to be paid a maximum of $500 profit and an additional $100 to cover overhead expenses on each house sold. Profits to be received by the construction company were to be applied against the note owed to the registrant.

8/ In its offer of settlement, registrant agreed to send a copy of our Findings and Opinion to its shareholders prior to the next annual meeting of shareholders.